SENATE—*Monday, July 17, 1989*

(Legislative day of Tuesday, January 3, 1989)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Blessed are the poor in spirit: for theirs is the kingdom of heaven.

Blessed are they that mourn: for they shall be comforted.

Blessed are the meek: for they shall inherit the earth.

Blessed are they which do hunger and thirst after righteousness: for they shall be filled.

Blessed are the merciful: for they shall obtain mercy.

Blessed are the pure in heart: for they shall see God.

Blessed are the peacemakers: for they shall be called the children of God.

Blessed are they which are persecuted for righteousness' sake: for theirs is the kingdom of heaven. Matthew 5:3-10.

Gracious God, unrealistic as these words of Jesus sound in our culture, lead us in the way of the blessed life that we may be a blessing to each other, our families, and the people.

In the blessed name of Jesus. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the standing order, the majority leader is recognized.

THE JOURNAL

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SCHEDULE

Mr. MITCHELL. Mr. President, this morning, following the time for the two leaders, there will be a period for morning business not to extend beyond 12 noon with Senators permitted to speak therein for up to 5 minutes each.

Mr. President, at noon the Senate will resume consideration of S. 1160, the State Department authorization bill.

There will be no rollcall votes today. If votes are ordered, they will occur tomorrow after 2:15 p.m.

Under the unanimous-consent agreement, a vote on the Moynihan amendment (No. 268) will occur at 2:15 p.m. tomorrow. Other votes on or in relation to the State Department authorization are likely thereafter during the session tomorrow.

Mr. President, I reserve the remainder of my leader time and I yield to the distinguished Republican leader.

The PRESIDENT pro tempore. Without objection, the remainder of the leader's time will be reserved to the majority leader.

RECOGNITION OF THE REPUBLICAN LEADER

The PRESIDENT pro tempore. Under the order, the Republican leader is recognized.

Mr. DOLE. Mr. President, I would only indicate that it is my hope that sometime this week, following the item the majority leader has addressed, we can find time to pass drought legislation. It is my hope, and I hope and I believe the hope of Members on both sides who serve on the Agriculture Committee, that we can find some way to address the immediate problem in those areas that already have demonstrated loss; at the same time try to devise some mechanism to take care of any future disaster losses in spring crops.

If we can address that and find enough money to do it, then I think we can pass a bill in the Ag Committee which would pass the Senate very quickly, if we have a consensus.

In addition, I know the chairman of the committee is very eager to pass rural development legislation. There have been no specific hearings held on that legislation, but there has been a lot of negotiation between the ranking Republican on that committee, Senator LUGAR, and the chairman, Senator LEAHY.

It is the hope of all of us that any other differences in rural development legislation can be resolved prior to coming to the floor.

Maybe it is a big order, but if that can be accomplished, if there is a bipartisan effort to work on both of those bills on Thursday of this week, it would seem to me that they could come to the floor in a very narrow time agreement. We might be able to dispose of both this week.

It is particularly important for drought legislation to be not only approved by the Senate but to go to conference with the House-passed bill and have the conference pass that so it can be signed by the President before the August 4 recess.

The House-passed bill is a much more expensive bill. It potentially covers all crops. It is hopeful that the Senate bill can be more narrowly drawn. I know that efforts are being made through the Office of Management and Budget and the Congressional Budget Office to see if, in view of recent weather reports, there will be additional savings that can be found to increase the prospects for payments for spring-planted crops that may suffer from drought later on.

So it is my hope that we can also add those to the week's schedule, if possible.

Mr. MITCHELL. Mr. President, as the distinguished Republican leader knows, I have placed a very high priority on the rural development legislation and have discussed with the Republican leader and the chairman of the Agriculture Committee the possibility of moving both that and the disaster relief bill this week.

It is my fervent hope that both will be ready for action. I am aware of the importance which many Senators representing States which have incurred disasters place on that legislation and, of course, all of us who represent rural States—and that is many Members of the Senate—are deeply concerned about the unevenness of economic development across the country and the development needs in rural areas.

So I share the Republican leader's hope. If the committee is able to complete action on the rural development legislation this week, which I expect it will, and are able to work out a procedure for handling the disaster relief bill that is acceptable to all concerned and we can act on that as well, why, we certainly will do so.

Mr. DOLE. If the majority leader will yield, I think the only problem would be getting the committee reports done, say, overnight on Wednesday. We are not there yet. Hopefully, if we could not do it by Friday, it can be taken up early next week, if we can get an agreement on both bills that does not interfere with the majority leader's other scheduled plans.

Mr. MITCHELL. It will not, because nothing we have scheduled has a higher priority in my view than the

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

rural development and disaster relief legislation.

Mr. DOLE. Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. Without objection, the remainder of the Republican leader's time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. There will now be a period for morning business not to extend beyond 12 o'clock noon. Senators are permitted to speak up to 5 minutes each during that period.

What is the will of the Senate?

Mr. LIEBERMAN addressed the Chair.

The PRESIDENT pro tempore. The junior Senator from Connecticut [Mr. LIEBERMAN] is recognized.

JOHN N. DEMPSEY

Mr. LIEBERMAN. Mr. President, the people of Connecticut were saddened yesterday at the news that our former Governor, John N. Dempsey, had died at his home in Killingly.

This great Irish-American was beloved throughout our State by people of all nationalities, colors and creeds. His life gave proof to the truth of the American dream. An immigrant to this land, he rose to the highest office in his adopted State by virtue of the openness of our society and the strength of his talents.

As Governor, John Dempsey presided over a period of remarkable growth in Connecticut. Yet in the midst of prosperity, John Dempsey took care to attend to the needs of the underprivileged. He was a particularly forceful advocate for the rights of those with mental retardation, making our State a leader in enhancing their lives.

He was also one of the Nation's first environmental Governors, enacting laws protecting the air, land, and water long before the issue was on the national agenda.

John Dempsey was known, too, for his love of education, and his desire to give all the young people in Connecticut an opportunity to receive the best schooling possible.

He promoted the development of higher education in our State, bringing the University of Connecticut to its golden era and championed interest-free loans for college students, among other innovations. The people of Connecticut, Mr. President, responded to John Dempsey's concern for their well-being by making him one of our State's most popular figures, a popularity that continues to this very day. He was not only an effective Governor; he was a tremendously charismatic and powerful campaigner and candidate for Governor. In my time, Mr. President, I never heard better stem-winding speeches given anywhere in America than those I heard given by Gov. John Dempsey.

In the election year of 1966, the late John Bailey, who I know, Mr. President, you knew well, responded to a question about the potential Republican nominee for Governor of Connecticut by saying, "I do not care who the Republicans run. I have Man O' War." Indeed, Mr. President, in John Dempsey, he did have Man O' War—a thoroughbred, a winner in every sense.

I had the honor of chronicling some of Gov. John Dempsey's career in my book, "The Legacy." Mr. President, I would like to take just a moment to briefly read a passage from that history of Connecticut government:

> On January 9, 1970, Governor John Dempsey asked (John) Bailey and Katherine Quinn to come to the governor's mansion. In a voice literally choked with emotion, this sincere and personally gifted man who had become governor told his two most trusted political allies that he was announcing his retirement the following day and would never again seek public office. There was much speculation that Dempsey's decision was caused by the acrimony, born of ambition within his own party during the preceding legislative session, and by the increasingly alarming fiscal condition of state government. But three years before, Dempsey had promised his ailing mother and his son, Father Edward Dempsey, that he would retire from public office at the end of that term. His departure concluded a 38-year career in public life and finished 10 years as governor, a time Joe Owens of the Bridgeport Post aptly described as a "Decade of Decency."

Mr. President, Gov. John Dempsey was a decent man; a decent man who became Governor and made the lives of the people of Connecticut better than they otherwise would be. The people of Connecticut are thankful for John Dempsey's life and for his service. We will remember him always with fondness and gratitude. I personally offer my condolences and my prayers to his wonderful wife, Mary, and to his devoted children, Father Edward, John, Jr., Kevin, and Margaret.

Thank you, Mr. President.

THE PASSING OF A CONNECTICUT GIANT: JOHN DEMPSEY DIES AT 74

Mr. DODD. Mr. President, a very great man, a very fine, remarkable, in fact, public servant, a dear friend of my family's and mine, died in Connecticut yesterday. Mr. President, John Dempsey, Governor of Connecticut from 1961 to 1971, was a leader of the rarest sort. He was a man of vision with a common touch.

Connecticut is the poorer, and certainly I am the poorer, Mr. President, for his passing.

They called John Dempsey "Man O' War," named after the winning thoroughbred. Mr. President, he was a winner and not just of elections. Although he certainly won many of those.

Gov. John Dempsey won passage of legislation that made Connecticut a pioneer in social and environmental issues in the 1960's. Through him the people of our State and in fact ultimately the people of this Nation won.

I knew John Dempsey for most of my life. In fact, Mr. President, I cannot recall a time when I did not know him. He was a friend of families generally but he was a particular friend of mine. He and my father fought side by side in Hartford and in Washington, DC, for many causes: Civil rights, the rights of the handicapped, increased support for education and other programs for the young.

Throughout my career in politics, Mr. President, a profession ennobled, I might add, by John Dempsey, he was a supporter and adviser, but always, always a friend.

Fifteen years ago this Saturday evening, in the first political steps that I took in my political life, John Dempsey stood next to me, helping to nominate me to Congress in the sweltering, boisterous, old-fashioned Democratic Convention in the old Knights of Columbus Hall in North Grosvenor Dale, CT. He was also there, Mr. President, in later nominating conventions for House and Senate races, in public and private events of every sort. And he was always available, as accessible to a young Connecticut Congressman just starting out in Washington as he was accessible to any constituent, any Connecticut neighbor, in the decade that he served as our Governor and beyond.

It was said at that time and has been said many times since that John Dempsey was a man of integrity, a Governor whose administration saw no hint of scandals.

But, Mr. President, his administration, his contributions were larger than that.

John Dempsey had a vision of what government is and could be that enriched all who served with him, all who learned from him, all who had the good fortune to benefit from his works. He was a compassionate man who formed and led a compassionate government, a government that searched out inequities and vanquished them; that reached out a hand to the disabled and the disadvantaged and brought them into the mainstream; that smoothed the rough edges of business and nature to help those who needed it, to keep the air and water clean, to make the cities livable.

John Dempsey arrived in the United States from his native Cahir in the county of Tipperary, Ireland, and who became this Nation's first Irish-born

Governor. He was fond of saying it, "I came here in short pants as an immigrant at the age of 10 and I saw what this country did for me."

It was an even trade, Mr. President; certainly an even trade. For all that his country and State gave him, John Dempsey gave as much, in fact I would argue, far more back. He was a giant. Connecticut will miss him, and I will miss him. I extend my deepest sorrows and sympathies to his family, his wife Mary, his sons who are great friends of mine, as well, and his grandchildren and the people of Connecticut who will meet this great warrior who Abraham Ribicoff and John Bailey called their Man O' War in Connecticut politics. We will not see his likes again in many, many a year to come.

Mr. President, there have been a number of articles written in the last 24 hours. I would like to print in the RECORD one by Elizabeth Lightfoot from the Associated Press; one by Charles Morse of the Hartford Courant that describes in great detail the accomplishments of John Dempsey; an article written, as well, in the New York Times today. I ask unanimous consent they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FORMER GOV. JOHN DEMPSEY DIES AT HOME

(By Elizabeth Lightfoot)

HARTFORD, CT. (AP)—Former Connecticut Gov. John N. Dempsey, an Irish immigrant whose decade as governor saw the passage of social and environmental laws that became models for later Federal legislation, has died of lung cancer at the age of 74.

Dempsey was surrounded by family members when he died at his Killingly home about 4 a.m. Sunday.

Dempsey was dubbed "Man-O-War" by the late legendary State and National Democratic Chairman John M. Bailey because of his ease at winning elections. Dempsey served as governor from 1961 to 1971, only the second person in Connecticut history to serve a full decade in that office.

During his years as governor, Dempsey oversaw the passage of a job-training law that became the model for the Federal Manpower Training Act. Connecticut was also one of the first states to impose water and air pollution restrictions, well before the Federal regulations.

U.S. Sen. Joseph I. Lieberman, D-Conn., who met Dempsey in the late 1960s while writing "The Legacy," a book about Connecticut politics, said Dempsey "proved the reality of the American dream."

"He was an immigrant to this country and by virtue of the openness of our society and the strength of his talent he became governor of our State," Lieberman said. "During his decade of leadership he presided over a period of tremendous growth and at the same time made Connecticut a leader in services for the underprivileged, most particularly those with mental retardation."

Dempsey entered the John N. Dempsey Hospital in Farmington, named in his honor, on June 16. He returned to his home in Killingly Friday so he could be with his family.

Gov. William A. O'Neill ordered flags flown at half-staff until Dempsey's burial and state flags will be flown half-staff during a 30-day period of mourning.

"With the passing of John Dempsey, Connecticut has lost one of its great public figures and I have lost a great friend," O'Neill said. "My association with John began more than 25 years ago, but my admiration for him began much earlier.

"As a young man thinking about entering public life, I saw in John Dempsey a model of what an elected official could and should be," O'Neill said. "He was an enthusiastic campaigner, a loyal ally, a great and popular leader and perhaps, most importantly, a good and considerate person."

Former Connecticut U.S. Sen. and Gov. Abraham A. Ribicoff called Dempsey a close friend. Dempsey succeeded Ribicoff as governor in 1961 when Ribicoff resigned to serve as Secretary of Health, Education and Welfare in the Kennedy administration.

"We worked together for many, many years and he was an outstanding human being," Ribicoff said.

U.S. Sen. Christopher Dodd, D-Conn., called Dempsey "an outstanding public servant and leader."

"He served as governor during some of Connecticut's most demanding times and served well," Dodd said. "He left us with healthier cities and healthier citizens, who today still benefit from his vision."

State Democratic Chairman John F. Droney Jr. called Dempsey a "great man and a great leader."

"Men like Dempsey come along only once in a century," Droney said. "The state is a lot poorer for the loss."

Dempsey emerged a winner in his first foray into local politics when he convinced the Putnam town fathers that his street needed a street light back in the '40s.

That little victory prompted townsfolk to convince the young Democrat to run for the city council when he was 21. He was later elected mayor, six consecutive times.

Throughout a 40-year political career, Dempsey lived by a simple credo: "You've got to help people. I love people."

In 1954, he ran for lieutenant governor on a ticket headed by Ribicoff. Back then, balloting for lieutenant governor and governor was separate, and Ribicoff won, but Dempsey lost. It was the first and only time that Dempsey experienced defeat in politics and Ribicoff made him his executive aide.

Then in 1958, he and Ribicoff ran together again and this time, both of them won.

Dempsey remained mayor of Putnam while serving as lieutenant governor, but had to leave both posts when Ribicoff went to Washington in 1961.

Dempsey dominated Connecticut politics during the '60s. He was elected to a full term in 1962, easily turning back a challenge from Republican John Alsop by 66,000 votes. Four years later, he crushed another GOP challenger, E. Clayton Gengras, winning by 115,000 votes.

He held the governor's office longer than anyone since Oliver Wolcott Jr., a Litchfield Federalist, who had it from 1817 to 1827.

Asked once to describe "the Dempsey years," he said: "I believe those years were devoted to the real meaning of government: people. People just want a chance.

"I had hoped to give all the people in Connecticut the opportunity that Connecticut gave me.

"I came here in short pants as an immigrant at the age of 10 and I saw what this country did for me," he said.

John Noel Dempsey was born Jan. 3, 1915, in Cahir, County Tipperary, Ireland. He arrived in the United States in 1925 and settled with his parents in Putnam. He graduated from Putnam High School and later studied at Providence College.

His Hartford career began in 1949 when he was elected to the House of Representatives, representing his little chunk of northeastern Connecticut. He was re-elected twice and served as House minority leader in 1953-54.

During his 10 years in office, more people than ever before were working for state government. That provided the foundation for both praise and criticism of Dempsey's tenure.

Critics complained that the state under Dempsey was run by committee and that too much of the authority that belonged in the hands of elected officials was farmed out.

Dempsey insisted that his decision not to seek a third term in 1970 had nothing to do with the state's budget crisis at the time, a $400 million deficit. Rather, he said, he thought it was time to open things up to younger Democrats and "I (was) going to set the example."

Dempsey's was a sprawling administration that boomed in the good years between his start in 1961, when unemployment was high and taxes had to be raised, and his retirement in 1971, when unemployment climbed again and taxes had to be raised by his Republican successor, Thomas Meskill.

"My worst political years were when we had surpluses," he recalled. "A. Searle Pinney of Brookfield (state GOP chairman at the time) used to call me and tell me you don't run government for a profit."

After he left office, he worked for a year as a consultant on environmental issues for Southern New England Telecommunications Inc.

A champion of the mentally retarded during his years in office, Dempsey's retirement was highlighted by his successful efforts to return to Connecticut.

Although he left official political life 18 years ago, he remained active, frequently leaving the sidelines to hit the campaign trail, most recently on O'Neill's behalf. He served as O'Neill's campaign chairman in 1982 and 1986.

He called O'Neill "a member of one of my closest groups. Anytime I can help, I'm glad to."

Dempsey and his wife, Mary, who lived in Groton for 18 years, moved last December to the Dayville section of Killingly.

The Dempseys had lived in Putnam for 16 years before moving to Hartford during Dempsey's years as governor.

In addition to the John N. Dempsey Hospital at the University of Connecticut Health Center, a facility for the mentally retarded in Putnam is named after him.

Besides his wife, Dempsey is survived by three sons, a daughter and nine grandchildren.

A funeral service will be held 11 a.m. Wednesday at St. Mary's Church in Putnam. Burial will be at the parish cemetery immediately after the funeral.

Calling hours will be on Tuesday from 2 p.m. to 4 p.m. and 7 p.m. to 9 p.m. at the National Guard Armory in Putnam.

[From the Hartford Courant, July 17, 1989]

JOHN DEMPSEY DIES; WAS GOVERNOR 10 YEARS

(By Charles F.J. Morse)

John Noel Dempsey, who came to this country from Ireland at age 10 and went on to become one of Connecticut's most popular and compassionate governors, died early Sunday at his home on Alexander Lake in Killingly.

Dempsey, who had lung cancer, died about 4 a.m., surrounded by members of his family. He was 74.

Death came one month after he complained of a cough and was admitted to the hospital in Farmington that bears his name. On Friday he told hospital officials he wanted to go home.

His tenure as the state's 79th governor, from 1961 to 1971, was the longest of any governor since Oliver Wolcott Jr. of Litchfield, who held office from 1817 to 1827.

He was regarded as a champion of the less fortunate, devoted especially to the mentally and physically handicapped, committing the power and prestige of the state's highest office to solving their problems.

"Connecticut will long remember the Dempsey years as a time of wonderful growth and achievement," Gov. William A. O'Neill said Sunday. "I saw in John Dempsey what an elected official could and should be. He was an enthusiastic campaigner, a loyal ally, a great and popular leader and, perhaps most important, a good and considerate person."

O'Neill ordered flags in Connecticut to be lowered to half-staff until after Dempsey's burial Wednesday. State of Connecticut flags will remain lowered for 30 days.

Dempsey's strength can best be summed up in one word: people. They knew him. They liked him.

One summer Sunday afternoon before he left office, Dempsey stood knee-deep in the water off Duck Island near Westbrook. He wore only his trunks, and his wet hair streamed down over his face.

He was hailed by a passing boat. "Hello, governor," a youngster yelled, with a friendly wave.

Dempsey waved back.

"See, I told you," the boy said to his parents. "That was Gov. Dempsey."

Politics was his life, and he, in turn, was a dream come true for his beloved Democratic Party.

His state chairman during his years in office, John M. Bailey, who died in 1975, used to call Dempsey "Man O' War," referring to the great racehorse, because of his ability to win.

In 1970 when Dempsey announced he would not run for reelection, a Courant editorial called him "a governor of integrity, of sincere public interest and a personality of charm and magnetism."

His popularity continued through his retirement.

Warm tributes flowed easily from other former governors and colleagues.

Former U.S. Sen. and Gov. Abraham A. Ribicoff called him "a magnificent governor . . . with an outstanding personality that struck sparks of affection from everybody in the state.

"John Dempsey continued to be the most popular political figure in Connecticut right to the end," U.S. Second Circuit Appeals Judge Thomas J. Meskill said.

"He was the consummate public servant: honest, loyal and effective," said Meskill, a Republican who succeeded Dempsey as governor.

Lt. Gov. Joseph J. Fauliso, one of Hartford's state senators during the Dempsey years, said, "He was a person of profound faith, and that faith actively shaped his life, a life of simplicity, honesty and humility."

Robert K. Killian, who served with the governor as attorney general and later as lieutenant governor, remembered how Dempsey set the attitude and pace of government himself.

"There was no attitude of confrontation as there is today," Killian said. "John Dempsey created an unusual era of good feeling. He created it himself; it was the way he lived his life."

State Supreme Court Justice T. Clark Hull, a Republican state senator during Dempsey's years in office and then lieutenant governor, said:

"I always felt he didn't get the credit he really deserved—for civil rights and the rights of the disadvantaged. During his 10 years there wasn't even a hint of scandal in his administration."

Former U.S. Sen. Lowell P. Weicker said, "There was decency in everything the man fought for, then did."

"I first came into politics when he was governor. His example had as great an impact on me as anyone," Weicker, a Republican, said.

"Kindness and decency was his personal style, which was translated into his legislative bequest," he said. "John Dempsey's was the world of politics that should be the world of politics, not the cesspool it is today."

AID FOR DISADVANTAGED

Dempsey's greatest achievement was to open the gates and doors of Connecticut's training schools and mental hospitals to the public eye.

In this crusade, the governor was joined by his wife, Mary. Together they were advocates for the mentally ill, the retarded, the blind and the deaf. They did not simply work for the handicapped but worked with them, inviting them into their home and asking them to participate in programs at the State Capitol.

Reporters who accompanied the Dempseys on Christmas and summer visits to all of the state training schools and hospitals can vouch for the emotional toll it took.

Tears came easily to Dempsey. So did words and the ability to deliver them with passion.

Ireland flowed proudly in his veins—in wit, emotion, song and religious faith.

He was born Jan. 3, 1915, the son of a sergeant major in the British Army. His parents emigrated to the United States from Cahir, County Tipperary, in 1925 because they believed America afforded greater opportunity for their only son. They settled in Putnam, where Dempsey's father worked in textiles.

After graduating from local schools, Dempsey attended Providence College. He ran for his first public office, that of Putnam councilman, when he reached 21 in 1936.

Thereafter his service ranged upward: 12 years as Putnam mayor, three consecutive terms in the State House of Representatives, and positions as executive aide in the governor's office, lieutenant governor, and finally, America's first Irish-born governor.

Dempsey's only loss was in 1954, when Charles W. Jewett defeated him by 5,400 votes out of nearly 1 million cast for lieutenant governor. When Dempsey tried again in 1958, he was elected by a margin of more than 170,000 votes.

He became governor Jan. 21, 1961, after Ribicoff resigned to accept an appointment as secretary of Health, Education and Welfare in the Cabinet of President Kennedy.

In the election of 1962, Dempsey won his first four-year term as governor, defeating Hartford insurance executive John Alsop by more than 66,000 votes.

He was able to enlist some of the state's best minds and corporate leadership to work voluntarily on boards, commissions and task forces.

Dempsey also recruited some unusual talent for his closest advisers—Bailey; Secretary of the State Ella T. Grasso, who later became governor; finance commissioners George G. Conkling and Lee V. Donahue, who is now a state auditor; and C. Perrie Phillips, who later became a Superior Court judge.

THE BOOM YEARS

During his 10 years in office, more people than ever before were working for state government. That provided the foundation for both praise and criticism of Dempsey's tenure.

Critics complained that the state under Dempsey was run by committee and that too much of the authority that belonged in the hands of elected officials was farmed out.

Dempsey's was a sprawling administration that boomed in the good years between his start in 1961, when unemployment was high and taxes had to be raised, and his retirement in 1971, when unemployment climbed again and taxes had to be raised by his Republican successor, Meskill.

Some of his most difficult problems were caused by the ailing New York, New Haven and Hartford railroad, which needed constant and expensive attention.

The middle years of his administration saw gains in many areas, including civil rights, clean water, clean air, mental health, programs benefiting youths, corrections, conservation, education, highway safety, programs aiding the physically handicapped and programs combating drug abuse and crime.

During those years, Homer Babidge became the president of the University of Connecticut and, with Dempsey's support, improved its faculty and programs and transformed it into a major New England university.

On May 17, 1966, Dempsey broke ground for a facility then known as the state's medical-dental school. He considered it one of the great achievements of his administration.

It was in the school's medical center, now called John Dempsey Hospital that his fatal disease was diagnosed, though not officially disclosed.

Only once did he clash seriously with his own party members. During the 1969 legislative session, Democratic state senators increased the sales tax from 5 percent to 6 percent, initiated taxes on capital gains, and moved toward annual sessions, all of which Dempsey opposed.

The governor vetoed the budget on the last night of the session, forcing a special session and a half-point cut in the sales tax to 5.5 percent. Those close to him believed the session contributed to his decision to retire.

Dempsey subjected himself to unusual public exposure, insisting on easy accessibility. He was the last governor to hold daily press conferences at the State Capitol.

Part of his charm, and thus his popularity, was his memory for names. It was an unusual experience for many. To be greeted warmly by name by the governor of Connecticut was surprising and flattering. Often, he would greet spouses and children by name as well.

The ultimate example occurred one afternoon in 1965 as Dempsey was welcomed home to Chair after an absence of 23 years. He was paraded to the center of town to the cheers, the bagpipes and the strains of "Kelly, the boy from Kilane."

As he walked along, he spotted a familiar face in the crowd. Without hesitation, as if it had been yesterday instead of 23 years ago, he called out:

"Timothy Looney, I didn't forget you."

They cheered him even louder, and toasted the lad who had remembered—well into the night.

A FAVORITE TOAST

One of Dempsey's last official tasks for the state was to head the committee that returned the USS Nautilus to New London. During 30 years of service, the nuclear submarine, built by Connecticut workers, logged 450,000 nautical miles. It is now a historic landmark.

Since leaving the office of governor—first moving to Mumford Cove in Groton and then in December returning to a home on Alexander Lake near Putnam—Dempsey had remained active in Democratic politics.

Twice he served as chairman of O'Neill's gubernatorial campaigns. He also remained a favorite speaker at fund-raisers and testimonials.

Invariably, Dempsey would end a spirited evening with his father's favorite toast:

Here's to the land of the shamrock so green;
Here's to each lad and his Irish colleen;
Here's to the lands we love dearest and most;
Bless America, unite Ireland, that's the real Irish toast.

Dempsey leaves his wife, Mary Frey Dempsey, whom he met at Putnam High School and married July 27, 1948; three sons, the Rev. Edward Dempsey of Hartford, John N. Dempsey Jr. of Nantucket, Mass., and Kevin B. Dempsey of West Hartford; a daughter, Margaret Gankofskie of Willington; and nine grandchildren.

His funeral will be in St. Mary's Church, Putnam, on Wednesday at 11 a.m., with burial to be in the parish cemetery.

He will lie in state at the National Guard Armory in Putnam. Calling hours will be Tuesday from 2 to 4 and 7 to 9 p.m.

[From the New York Times, July 17, 1989]

FORMER GOV. JOHN DEMPSEY, 74; LED CONNECTICUT DURING THE 60'S

(By Kirk Johnson)

HARTFORD, July 16.—Former Gov. John N. Dempsey, a liberal Democrat who helped foster Connecticut's reputation in the 1960's as a national trend-setter in social and environmental laws, died of lung cancer today at his home in Killingly, Conn. He was 74 years old.

Mr. Dempsey returned home Friday after being a patient for a month at the John Dempsey Hospital in Farmington, which was named in his honor.

He served as Connecticut's Governor from 1961 to 1971, overseeing the passage of a job-training law that became the model for the Federal Manpower Training Act, and the first revision of the Connecticut Constitution in 150 years, which redrew the boundaries of the General Assembly districts.

In the Dempsey years, Connecticut was also among the first states to impose restrictions on air and water pollution, well in advance of similar Federal laws. Mr. Dempsey also pushed through the first appropriations to establish the University of Connecticut Health Center, which includes the hospital named for him.

John Noel Dempsey was born Jan. 3, 1915, in Cahir, County Tipperary, Ireland, the only son of a career British Army officer. He immigrated with his family in 1925 to Putnam, Conn., in the northeastern corner of the state. Mr. Dempsey lived there most of his life, working first in the town's then-booming textile industry and then in Town Hall, which became the base for his rise in state politics.

EVERY MUNICIPAL POSITION

Known throughout his career as a gregarious and diplomatic man, Mr. Dempsey was elected to the Putnam City Council at the age of 21, and over the next 25 years served in every elected municipal position, including six two-year terms as Mayor, beginning in 1948. After his election to the General Assembly in 1949, he continued to divide his responsibilities between local and state offices.

While continuing as Mayor, Mr. Dempsey served in Connecticut's General Assembly from 1949 through 1955, then as an executive secretary to Governor Ribicoff from 1955 until the 1958 election, when he became Lieutenant Governor.

He became Governor in January 1961, when Gov. Abraham A. Ribicoff resigned to become Secretary of Health, Education and Welfare under President John F. Kennedy. Mr. Dempsey, Connecticut's first foreign-born Governor in almost 300 years, was elected twice on his own over Republican opponents, in 1962 and 1966.

He chose not to run again in 1970 and returned to Putnam and to the family textile business. He worked briefly as an consultant on environmental matters to the Southern New England Telephone Company in the early 1970's and remained active in state politics.

CONSTITUTIONAL CRISIS

Perhaps the greatest crisis of his governorship occurred in 1964, when a Federal District Court panel ruled that the General Assembly districts were unconstitutional because of changes in state population. Working under an emergency declaration that kept Assembly members in office through two special sessions, the state revised the districts and put a revised Constitution in place in 1965, in time for the 1966 elections.

Mr. Dempsey is survived by his wife, the former Mary Frey; three sons, the Rev. Edward and John Jr., both of Hartford, and Kevin, of West Hartford; a daughter, Margaret Dempsey Gankofskie of Willington, and nine grandchildren.

A wake will be held Tuesday from 2 to 4 P.M. and 7 to 9 P.M. at the Connecticut State Armory in Putnam and a funeral mass will be celebrated on Wednesday at 11 A.M. at St. Mary's Roman Catholic Church in Putnam.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I hope that I might join in the tribute to John Dempsey, Governor Dempsey, which we have just heard from our distinguished and learned colleague from Connecticut. The Governor of Connecticut is a person of consequence to the people of New York. We are neighbors, and in the case of John Dempsey we were truly friends.

He set a standard which few in any time can meet. Although I cannot claim anything like the close association of Senator DODD, I would hope to be not less an admirer and certainly would wish to endorse everying he has said. There are so few who have the privilege of setting not just standards but precedents.

He was the first Tipperary man to become Governor of Connecticut. I do not know what those ancient Congregationalists would have thought about that, but the contemporary ones like it. The people of Connecticut are better off for it, and from his example we are all instructed and enlarged. I thank the Senator for the opportunity to hear his remarks.

Mr. DODD. Mr. President, if I can say how deeply pleased I am our colleague from New York was on the floor because what he said was absolutely true. He knew him so well. In fact, my colleague from New York knows this coming Sunday there is a reunion. It will be 15 years ago I was nominated to Congress. John Dempsey stood with me on that night. It was 108 degrees.

Mr. MOYNIHAN. I dare say I have been in that Knights of Columbus hall.

Mr. DODD. I think you have. I think I invited you. I hope it was a cooler night than that when you were there. John Dempsey was invited. A group of us gathered 150 or 200 who were involved in that convention. In fact, my opponents, as well, are coming to reminisce on Sunday. We asked John to be there to be our keynote speaker on Sunday. Regrettably, he not be there, exept in spirit and, believe me, he will be there in spirit.

I will be talking to his children and lovely wife May in the next day or so, and I will express to them your warm, kind remarks on the floor of the Senate today.

Mr. PRESSLER addressed the Chair.

The PRESIDENT pro tempore. The senior Senator from South Dakota, Mr. PRESSLER, is recognized for not to exceed 5 minutes.

THE B-2 BOMBER

Mr. PRESSLER. Mr. President, at this moment the B-2 Stealth bomber is flying in California in its test mission. I had the pleasure of visiting the B-2 site a couple of weeks ago, and it is a magnificent airplane. But I would urge that we not go forward with full-scale production of the B-2 until we

have made the B-1 an effective aircraft.

Several B-1's are stationed at Ellsworth Air Force Base in western South Dakota. We are very proud to have them there, but the B-1's have had a number of problems. Three of them have crashed, all for technical reasons. In one case a bird flew into an engine and a guard has been developed now for engines so birds will not fly into them. Another accident was blamed on pilot error, although some of the pilots I talked with felt that was a bit unfair because the electronics system and the communications system in the plane did not work properly in their judgment. A third crashed for reasons unknown.

One result of these accidents has been that Senators are no longer taken for rides on the B-1. At one time I and several of my colleagues had invitations for a ride on the B-1 bomber. Governors were also invited to go for rides. But those invitations have been rescinded until further notice. The point is there is an uncertainty about whether the B-1 bomber is safe.

The citizens of Rapid City, SD, have been concerned because one of the B-1's crashed near Rapid City. These aircraft can and should carry weapons during their operations. But people are wondering what will happen if one crashes near a major city with a weapon or a bomb on it.

Mr. President, we have some work to do in terms of making the B-1 bomber safe. There are a number of estimations of how much that would cost ranging from the millions into the billions, but it is our bomber fleet and we should make it safe before we go on to the B-2. What that will take I do not know for certain. We may have to go back to the contractors for corrections. I hope the taxpayers are not stuck with the total bill, but we cannot abandon the B-1 fleet. We also have budgetary constraints to deal with. There is an effort to keep military spending at a level that accounts for inflation, and that will be the extent of it.

We have to choose what we want to do, and my recommendation is not to go forward with large-scale production of the B-2 at this time but, rather, to fix up the B-1's and to take care of some of our other military needs. I will be joining in this effort when the defense appropriations bill comes before us. There will be amendments regarding the B-2, and I wish to inform my colleagues that I shall be supporting those amendments that would fix up the B-1 before we go to the B-2—that would essentially delay large-scale production of the B-2.

Mr. President, I yield the floor. I note the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll, the absence of a quorum having been suggested.

The legislative clerk proceeded to call the roll.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

NEVADA WILDERNESS PROTECTION ACT

Mr. REID. Mr. President, I recently introduced the Nevada Wilderness Protection Act of 1989. This bill will designate specific sectors of the National Forest Service land as wilderness. It is a culmination of years of hard work and compromise. In terms of sheer land mass Nevada is the seventh largest State in the country. It is the only State that has not adopted wilderness legislation.

Since the Forest Service's 1976 RARE II study, 3.2 million acres of Nevada land has been protected as de facto wilderness. The proposed legislation opens up 2.4 million acres for multiple use, and designates the remaining 730,000 acres as wilderness.

Our land, Mr. President, is something that we must share. Everybody has their own idea of what that sharing entails.

Everybody has their own interest, whether it be the preservation of wildlife and natural resources, mining and excavation, or development and recreation.

Almost 2 years ago, Nevada's Great Basin National Park was created and opened to the entire world.

I was joined by many groups, individuals, and colleagues in assuring that our vision for a Great Basin National Park became reality.

Nevertheless, our efforts were built upon 50 years of painstaking progress to get to the point where action was taken to preserve the park lands. The conflicts seemed unrelenting—compromise appeared as an illusion.

I was taught a lesson then that serves me well now as I push for the passage of wilderness legislation: Everybody at that time it seemed wanted a piece of the action.

The song, "This Land Is Your Land" takes on a new—and maybe even a troubling—meaning. The problem is not unique to Nevada. For example, a debate currently wages over the preservation of land and wildlife adjacent to Nevada in California's Mojave Desert.

A Los Angeles Times reporter recently noted that conflicts over land use are common. The reporter noted in his writing that "motorcyclists wrestling with backpackers, gold miners pitted against environmentalists, and cattlemen battling conservationists." That sums up the problem.

In Nevada, the conflict is sharpened by the State's growing population and economy.

Urban centers are expanding to encompass what were once suburban areas. The population is booming as more and more people move to Nevada and play a role in the State's thriving economy.

But in these changing times, there is one thing that remains constant. And that is the spectacular beauty and serenity of the areas designated as wilderness in this proposed legislation.

The kaleidoscope of sounds and sights that characterize the scenery in these areas is irreplaceable. If we open these few places for development, we risk losing rare natural resources.

Interior Secretary Lujan, in testimony during his nomination proceedings, stated that we can protect resources and undertake development concurrently.

He said we do not have to choose between preservation and development. I say that, in some instances, we do have to choose. I am willing to make some of those choices.

At times, such choices will be hard. But supporting the Nevada Wilderness Protection Act is not a hard choice.

The bill is a veritable windfall to ranchers, miners, developers, and recreational vehicle owners.

The bill opens up 2.4 million acres of National Forest Service land—land that, up to the present, is protected as wilderness. It is protected until we implement the letter of the law expressed in the Wilderness Act of 1964.

The act says we need to assess this Forest Service land and determine that which is suitable for wilderness designation. The land not deemed appropriate for wilderness designation would be released for multiple use.

Congress has passed wilderness legislation for every State except Nevada. It is time we decided the fate of the land held captive since 1964.

The choice is easy. The bill is similar to wilderness legislation passed for every other State. The bill frees up 2.4 million acres of land, while preserving only a little more than 700,000 acres for posterity.

The great writer Rudyard Kipling observed that we are given all the Earth to love—but our hearts are small.

I think Kipling would agree that we may not have the capacity or ability to preserve all of our environmental treasures—but we are able to chose those that are most dear, and preserve them as wilderness.

The choice, Mr. President, is an easy one. I encourage my colleagues to make this choice and support the Nevada Wilderness Act of 1989.

TERRY ANDERSON'S 1,584TH DAY OF CAPTIVITY

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that

today marks the 1,584th day that Terry Anderson has been held in captivity in Beirut.

I ask unanimous consent that an editorial by Andy Rooney on this subject be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Irondequoit Press, June 30, 1987]

TERRORISM IN BLOOM

(By Andy Rooney)

There are times when I don't have much control over which thoughts come into my head, or when. The American hostages of the terrorists in Lebanon showed up, unbidden, in my head this morning when I got up at 5:40.

It is almost, but not quite, light at that hour now, and if I don't turn the bathroom light on, I can leave the shade up and still not be seen. This enables me to look down on our pretty back yard while I'm toweling off.

There are tulips in front of the hedgerow and the magnolia tree is in bloom. It was while I was looking out the second-floor window that the captives came to my mind. The pleasant thoughts I was having flew out of my head.

What would the hostages give for a glimpse of the tulips? For the warm shower I'd just had? For my breakfast of fresh orange juice, coffee, and toast? For the friends and family I'd be surrounded by all day long?

It is sickeningly sad to contemplate these eight Americans cooped up in some miserably hot, dark, lifeless place, chained perhaps, with only their hope to live on. That hope has failed them so often, it must be difficult for them to continue having it. Even the eternal spring must run dry.

The hostages are intelligent and educated men, although the fact that they're intelligent and educated shouldn't make their situation any sadder. They are held, as best we know, in small rooms with almost nothing to do. They get no news, hear nothing from their friends or families, and, in all likelihood, despair of ever being released alive. It is far worse than a criminal's prison life.

You wonder what their captors think of them. Some personal relationships must have developed with the people who guard them and bring them food.

Their captors must know now that these Americans are decent, intelligent, innocent people. The captors are almost certainly deeply religious people. The Middle Eastern wars are basically religious wars. Do the captors feel any guilt, any remorse, over what they have done to these innocent individuals? Do they feel any compassion for their prisoners?

It is likely these zealots feel the sacrifice of their hostages' freedom is serving a higher cause. There is no fervor like religious fervor.

It would be a simple matter for the terrorists to murder their captives. There's no one to stop them. No one need know for weeks. You wonder whether the captors keep the hostages alive and feed them because of some sense of decency or merely because their prisoners are worth something to them alive and nothing to them dead.

Suicide must certainly come to the hostages' minds, but it is likely that even voluntary death is not an option available to them.

What is it the terrorists want again? We hardly remember—if we ever knew. Whatever it is, it is likely that the demand is nothing within the United States' power to grant.

The terrorists are not ordinary criminals. You should think that it must occur to them that it is a cruel thing they are doing. Our government did a foolish and dangerous thing when it offered weapons to the Iranians in exchange for hostages, while vowing, at the same time, not to negotiate. Paying off the terrorists makes hostages worth their taking. Every hostage taken from that day on can blame the people who made a deal. The eight hostages now held are held because of the hope our negotiators gave their captors that we're willing to pay ransom in the form of weapons and money.

There isn't time in our lives to feel sorry for everyone who ought to be felt sorry for. I just wished this morning that Terry Anderson, Thomas Sutherland, Frank Reed, Joseph Cicippio, Edward Tracy, Alann Steen, Jesse Turner, and Robert Polhill could have looked out on our garden with the tulips and then gone to work.

CONCLUSION OF MORNING BUSINESS

The PRESIDENT pro tempore. Morning business is closed.

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1990

The PRESIDENT pro tempore. Under the order, the Senate will resume consideration of S. 1160, the State Department authorization bill, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1160) to authorize appropriations for fiscal year 1990 for the Department of State, the United States Information Agency, the Board for International Broadcasting, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

(1) Helms amendment No. 269, to prohibit negotiations with terrorists responsible for the murder, injury or kidnaping of an American citizen.

(2) Grassley amendment No. 270 (to Amendment No. 269), of a perfecting nature.

(3) Heinz amendment No. 272, to provide international support for programs of sustainable development, environmental protection, and debt reduction.

Mr. PRESSLER. Mr. President, I have an amendment ready to go with, but I believe I will wait until Senator SARBANES arrives.

Mr. President, I note the absence of a quorum.

The PRESIDENT pro tempore. The absence of a quorum has been noted. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, today the Senate resumes consideration of S. 1160, the Foreign Relations Authorization Act. On Friday, the Senate adopted a very significant amendment, the Mitchell-Dole provision, providing sanctions with respect to China. This bill, which authorizes appropriations for the fiscal year 1990, for the Department of State, the U.S. Information Agency, and the Board for International Broadcasting, and for other purposes, will, of course, be before the Senate today.

No votes are scheduled for today, but it is expected that if amendments are offered on which votes will be required, they will be stacked and carried over until tomorrow, and voting will resume. Of course, noncontroversial amendments can be accepted, if cleared on both sides, and disposed of today. So it does offer an opportunity for Members to have those noncontroversial amendments dealt with and included in the legislation.

I yield the floor.

AMENDMENT NO. 273

Mr. PRESSLER addressed the Chair.

The PRESIDENT pro tempore. The senior Senator from South Dakota, Mr. PRESSLER, is recognized.

Mr. PRESSLER. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 273.

Mr. PRESSLER. Mr. President, I ask unanimous consent that the amendment be considered as if read.

The PRESIDENT pro tempore. Without objection, reading of the amendment will be dispensed with.

The amendment is as follows:

At the appropriate place add the following new section:

SEC. . The Director of the United States Information Agency may enter into a contract for the construction of the Voice of America's Thailand radio facilities for periods not in excess of five years or delegate such authority to the Corps of Engineers of the United States Department of the Army, provided that there are sufficient funds to cover at least the Government's liability for payments for the fiscal year in which the contract is awarded plus the full amount of estimated cancellation costs.

The PRESIDENT pro tempore. The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, this is a technical amendment that I understand is acceptable to the distinguished chairman of the committee.

This provision was requested by USIA. It would provide the Voice of America with the flexibility required

to continue to make maximum progress in its modernization and expansion programs in the face of continued budget realities.

This authority was not originally requested in the President's fiscal year 1990 budget in anticipation of receiving full funding for radio construction. However, it now appears that the fiscal year 1990 authorization for modernization will likely be lower than the administration's request.

Absent this requested authority, completion of the new Thailand relay station will be delayed by 12 to 18 months, and the cost of the project, according to USIA, will be increased by $6 million.

With this authority, it will be possible to award the facility construction contract in fiscal 1990 as planned and to fund it over 3 years, thereby reducing the cost in schedule impact of the budget cut and thus saving the taxpayers money.

Mr. President, I believe this technical amendment has been worked out among the staffs on both sides, and I request the adoption of the amendment.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. PRESSLER. I yield.

The PRESIDENT pro tempore. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, the distinguished Senator is correct. This amendment has been worked out. It is designed to allow the U.S. Information Agency some additional flexibility in order to proceed with the construction of certain radio facilities, and we are prepared to accept the amendment.

Mr. PRESSLER. Mr. President, I urge the adoption of the amendment.

Mr. HELMS addressed the Chair.

The PRESIDENT pro tempore. The Senator from North Carolina [Mr. HELMS] is recognized.

Mr. HELMS. Mr. President, I suggest the absence of a quorum for just a moment.

The PRESIDENT pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from North Carolina [Mr. HELMS] is recognized.

Mr. HELMS. I thank the Chair.

Mr. President, I have no objection to this amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the Senator from South Dakota.

The amendment (No. 273) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll, the absence of a quorum being suggested.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order for not to exceed 4 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

TWO HUNDRED YEARS AGO TODAY: SENATE PASSES THE JUDICIARY ACT OF 1789

Mr. BYRD. Mr. President, as chairman of the Senate Bicentennial Commission, I wish to take this opportunity to note a significant Senate anniversary. Exactly 200 years ago today, on July 17, 1789, the Senate approved the Judiciary Act of 1789. Known formally as "An Act to establish the Judicial Courts of the United States," and designated "S. 1," this measure gave shape to the judicial branch of the Federal Government. Following the Constitution's mandate, it established a Supreme Court with a chief justice and five associate justices; district courts for each State and the districts of Maine and Kentucky; and three traveling circuits as courts of original jurisdiction and appeals. With the exception of an 1891 statute that created a separate level of appellate circuit courts, no extreme departures have been made from the system that the Senate devised in 1789.

On April 7, 1789, the day following the establishment of its first quorum, the Senate had appointed an eight-member committee to draft this vital legislation. Connecticut Senator Oliver Ellsworth proved to be the most influential member of the panel, composed of one member from each State then represented in the Senate. Ellsworth received major assistance from William Paterson of New Jersey, and Caleb Strong of Massachusetts. These senators encounterd stiff opposition from a determined minority, who feared that the legislation would undermine State courts and would burden the Nation's meager treasury. Pennsylvania Senator William Maclay noted acidly, "It is certainly a Vile law System, calculated for Expence, and with a design to draw by degrees all law business into the Federal courts." Despite these objections, the Senate passed the bill by a vote of 14-6, and the House subsequently made minor changes in the Senate's handiwork. President George Washington signed the act on September 24.

On September 21 and 22, 1989, Georgetown University, the Bicentennial Committee of the Judicial Conference of the United States, and the Supreme Court Historical Society, in cooperation with the Senate Bicentennial Commission, will conduct a major conference on the Judiciary Act of 1789. For the first time, scholars, lawyers, judges, and Members of Congress will examine the origins of the Federal judiciary and the role of Federal courts in interpreting the Constitution. Senators and their staffs who wish more information about this important conference are welcome to contact the Senate Historical Office.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DIXON). Without objection, it is so ordered.

THE RAIN FORESTS

Mr. CHAFEE. Mr. President, I have here an extremely interesting article from the Statesman of Boise, ID, July 11, 1989, dealing with the work that our colleague, Senator STEVE SYMMS, does in connection with the environment and particularly in connection with the legislation he has been involved with concerning preservation of the rain forests in Brazil.

I went to Brazil early this year with Senator SYMMS, the senior Senator from Arkansas, Senator BUMPERS, and Senator SPECTER.

We had an opportunity to see the rain forests firsthand. Indeed, we went to Manaus, which is, as you know, some thousand miles inland up the Amazon River, and from there we want back into the rain forests and stayed at a camp sponsored by World Wildlife Fund.

Mr. President, I ask unanimous consent that this article which starts off "Symms Leads Way With Legislation To Protect Rain Forests" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Boise Idaho Statesman, July 11, 1989]

SYMMS LEADS WAY WITH LEGISLATION TO PROTECT RAIN FORESTS

Idaho Sen. Steve Symms, a nemesis for the nation's environmental organizations on the domestic front, has joined forces with them on what could become a historic landmark in global environmental protection.

Symms is the chief sponsor of far-reaching legislation seeking to apply provisions of the National Environmental Policy Act, a linchpin of domestic environmental law, to American aid projects abroad.

The main aim is to put the brakes on tropical deforestation in Third World nations, particularly in Africa and Latin America. The leading offender is Brazil, where the Amazon rain forest is disappearing at an alarming rate.

Symms first introduced the bill last year. It failed to win broad support in either the Senate or the environmental community, but congressional sources say that was due mainly to reservations about Symms' record and reputation, since overcome.

This year, Symms has built a constituency in a big way. He has signed up every member of the Senate Environmental and Public Works Committee, including Senate Majority Leader George Mitchell, and every major environmental organization, from the Sierra Club to the Environmental Defense Fund.

Distaste for congressional involvement in foreign policy places the administration in opposition. But the broad bipartisan backing gives the bill excellent prospects for passage despite lack of a presidential blessing.

Symms, who toured the Amazon in April with other members of the committee, clearly has a genuine concern about the rape of Brazil's irreplaceable rain forests. The issues he raises—erosion, sedimentation, flooding, loss of genetic diversity, destruction of an irreplaceable resource and contribution to global warming—are all to real.

He also has another motive: helping even the playing field for American agriculture in the international arena. He considers it doubly unfair for foreign competitors to receive American subsidies for projects exempt from the environmental restrictions American producers contend with.

He is appalled when he contrasts American farm and forest practices with those of Third World nations receiving U.S. aid. Reasonable people may differ how good American stewardship is, but he's right when he says Third World stewardship is vastly worse. He's also right when he says it has the potential to affect us all.

Capital investment in developing nations is largely funded through direct foreign aid or government-backed loans. Other western nations are also involved, but loans are typically channeled through the World Bank, in which the U.S. plays a voting role.

Symms' bill would require the U.S. to request completion of environmental impact assessments at least 120 days prior to votes on loan applications for development projects.

The bill would encourage environmental assessments for all international aid projects and offer U.S. assistance in preparation of such assessments by lenders and borrowers. It would also declare preservation of tropical forests a national priority.

This is a noble piece of legislation with noble aims. It deserves strong support from all who care about the global environment.

Mr. CHAFEE. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1990

The Senate continued with the consideration of the bill.

AMENDMENT NO. 271, AS MODIFIED

Mr. SARBANES. Mr. President, we wish to make a technical change to amendment No. 271 which was agreed to on Friday. I, therefore, ask unanimous consent that amendment No. 271 be modified with the language I now send to the desk.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is so modified.

The amendment, as modified, is as follows:

On page 2 of the Mitchell amendment No. 271, strike lines 19 through 22 and insert: "the President urge the Export-Import Bank of the United States to postpone immediately approval of any application for financing United States exports to the People's Republic of China;".

Mr. SARBANES. Mr. President, I yield to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, this amendment would have the President urge, instead of Congress directing, the Eximbank to take certain actions because the Eximbank has a certain independence. But further than that, it also corrects a split infinitive, and there is a little story behind that.

Miss Annie Lee, my high school English teacher, more years ago than I like to admit, was death on split infinitives. I remember a number of lectures we had from her in particular about how wrong it was to split an infinitive. All the time in legislation before the Congress, infinitives are split with regularity.

I remember on one occasion, I was dealing with the then-distinguished Senator from Minnesota, Mr. Humphrey, on a delicate matter of some complexity, and we worked all the problems out. He said, "Is there anything else?" I said, "One thing. Miss Annie Lee would want us to correct the split infinitive here."

He said, "Who is Miss Annie Lee?" Well, Miss Annie Lee was still alive then, and I told Senator Hubert Humphrey about her and he said, "Well, let's make this correction for Annie Lee and give her my best regards."

After it was over, I called Miss Annie Lee and told her I corrected a split infinitive today in her honor.

I thank the Chair.

(Mr. ROCKEFELLER assumed the chair.)

RECESS

Mr. SARBANES. Mr. President, on behalf of the majority leader, I ask unanimous consent the Senate now stand in recess until 3 p.m. today.

There being no objection, at 2:05 p.m., the Senate recessed until 2:58 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. REID].

The PRESIDING OFFICER. The business now pending before the Senate is S. 1160, the Foreign Relations Authorization Act.

The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, I observe that the distinguished Senator from North Carolina is on his way to the floor. He has not as yet arrived and we would not wish to proceed save that he were present. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I believe the distinguished Senator from Georgia has an amendment at the manager's table. Would it be his wish we go forward with that amendment on his behalf?

Mr. FOWLER. Mr. President, I would be very pleased if the floor leader would go forward with that amendment. I appreciate his courtesy.

AMENDMENT NO 274

(Purpose: To prohibit the availability of funds for certain meetings unless representatives of the Helsinki Commission are included)

Mr. MOYNIHAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration. Mr. President, I ask this amendment be offered on behalf of the Senator from Georgia [Mr. FOWLER].

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for Mr. FOWLER, proposes an amendment numbered 274.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 7, between lines 2 and 3, insert the following new subsection:

(c) PROHIBITION.—None of the funds authorized to be appropriated under subsection (a)(3), may be obligated or expended for any United States delegation to any meeting of the Conference on Security and Cooperation in Europe (CSCE) or meetings within the framework of the CSCE unless the United States delegation to any such meeting includes individuals representing the Commission on Security and Cooperation in Europe.

Mr. FOWLER. Mr. President, I rise today to propose an amendment to fiscal year 1990 State Department Authorization Act. The amendment would prohibit the funding of any U.S. delegation to any meeting operating within the framework of the CSCE process, including the Negotiation on Conventional Armed Forces in Europe [CFE], which does not include a representative of the CSCE Commission, Helsinki Commission. The Commission was created by Congress in 1976 as an independent legislative branch agency responsible for monitoring implementation of the Helsinki accords. In addition to its bipartisan bicameral membership, the Commission also includes high-ranking officials from the excutive branch appointed by the President. The Commission, which is funded under the Commerce, Justice, State, and Related Agencies appropriation bill, is not a congressional committee.

The Commission has played an active role in the CSCE process, having been represented at every CSCE meeting since the signing of the final act in 1975. Commissioners and staff have been officially named as full-fledged members of U.S. delegations to CSCE meetings, including those devoted to military security—an increasingly important area of the Helsinki process. Last November two interrelated sets of military talks opened in Vienna: One to consider enhanced confidence- and security-building measures, CSMB's, the other on conventional forces in Europe. While the Commission is represented at the former, it has been blocked by the State Department, from participating in the latter despite the fact that these talks are being conducted within the framework of the CSCE process.

The amendment, identical to language contained in section 102(c)(2) of the House bill, would remedy this situation. Its adoption would ensure that the Commission, which has served as the lead agency for monitoring CSCE-related matters, is allowed to discharge its statutory responsibilities.

I thank the Chair.

Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of the amendment by the distinguished junior Senator from Georgia. This amendment will prohibit the availability of funds for U.S. delegations to any meeting of the Conference on Security and Cooperation in Europe [CSCE] or any meetings within the framework of the CSCE, unless the U.S. delegation includes an individual representing the Helsinki Commission.

As a past chairman and current ranking Republican Senate member of the Commission, I join with Senator FOWLER and the Commission's current chairman, Senator DECONCINI, to offer this amendment to ensure that a Commission representative is included in the U.S. delegation to the Negotiations on Conventional Armed Forces in Europe. This representative would serve on the same basis as does the current Commission representative on the U.S. delegation to the Conference on Confidence and Security Building Measures and Disarmament in Europe, otherwise known as the CDE talks.

The House version of this measure, H.R. 1487, already includes this language as section 102(c)(2). It was offered by another Helsinki Commissioner, the Honorable BILL RICHARDSON from New Mexico, and was adopted on a voice vote.

The Department of State now routinely includes Commission staff in the U.S. delegations to all CSCE process events. The U.S. delegation to the Stockholm CDE talks included Commission staffers, and Commissioners were officially listed as senior members of the delegation.

However, now that the Conventional Armed Forces in Europe talks have convened within the framework of the CSCE pursuant to the Vienna Concluding Document, the Department has not yet decided to allow Commission representation on the U.S. delegation. This amendment should settle that issue in favor of the Commission.

The amendment does not intrude into the foreign affairs prerogatives of the executive branch. The Helsinki Commission is not a committee of Congress. It is clearly and easily distinguishable from a congressional committee. Unlike any committee of Congress, the Commission was authorized by Public Law (Public Law 94-304), which is codified as title 22 United States Code, sections 3001 through 3009. Unlike congressional committees, which are funded through the legislative branch appropriations bill, the Commission is appropriated for annually in the Commerce, Justice, State, the Judiciary, and Related Agencies appropriation bill.

Also unlike congressional committees, the Commission has by statute three senior executive branch members as Commissioners. These Commissioners are representatives of the Commerce Department, the Defense Department, and the State Department. Moreover, these Commissioners are appointed by the President pursuant to 22 U.S.C. 3003. These executive branch members have sat as Commissioners during Commission hearings and have participated in other Commission events as Commissioners. The State Department, having its own Commissioner, has the right and privilege to raise any issues it desires during Commission business meetings, something it cannot do when dealing with the Foreign Relations Committee, for example.

Since the Vienna Concluding Document states that the CFE "* * * negotiations will be conducted within the framework of the CSCE process," those talks fall within the statutory mandate of the Commission "* * * to monitor the acts of the signatories which reflect compliance with or violation of the articles of the Final Act of the Conference on Security and Cooperation in Europe. * * *" Given the close connection between the CDE talks—also resumed in Vienna—and the CFE talks, Commission membership on the CFE delegation is necessary for it to meet its statutory obligations.

It is important to note that the U.S. delegation to the CDE talks in Vienna has a Commission representative on board. It will not increase the cost to the U.S. taxpayer to have that person added to the CFE delegation's membership.

In fact, the United States is one of only two participating states not to use the same people to form both its CDE and CFE delegations. The Soviets have proposed that the CFE negotiators take up some matters relating to confidence and security building measures, matters that properly belong in the CDE talks. This close connection between the two negotiations, which overlap in time, place, participants, and subject matter makes it essential that the Commission have a representative on the CFE delegation.

I ask for the support of all Senators for this amendment. Adoption of this amendment will take the issue out of the scope of conference on the bill. I believe that it is important that the Senate clearly express itself in agreement with the House on this issue and not leave the matter to be resolved in conference.

Mr. DECONCINI. Mr. President, I rise today to join as a cosponsor of an amendment proposed by Senator FOWLER to fiscal year 1990 State Department Authorization Act. The amendment would prohibit the funding of any U.S. delegation to any meeting operating within the framework of the Conference on Security and Cooperation in Europe [CSCE] process, including the Negotiation on Conventional Armed Forces in Europe [CFE], which does not include a representative of the CSCE Commission, Helsinki Commission. The Commission, which I have the honor of chairing, was created by Congress in 1976 as an independent legislative branch agency responsible for monitoring implemen-

tation of the Helsinki accords. In addition to its bipartisan bicameral membership, the Commission also includes high-ranking officials from the executive branch appointed by the President. The Commission, which is funded under the Commerce, Justice, State, and Related Agencies appropriation bill, is not a congressional committee.

The Commission has played an active role in the CSCE process, having been represented at every CSCE meeting since the signing of the Final Act in 1975. Commissioners and staff have been officially named as full-fledged members of U.S. delegations to CSCE meetings, including those devoted to military security—an increasingly important area of the Helsinki process. Last November two interrelated sets of military talks opened in Vienna: One to consider enhanced confidence- and security-building measures [CSBM's], the other on conventional forces in Europe. While the Commission is represented at the former, it has been blocked by the State Department, from participating in the latter despite the fact that these talks are being conducted within the framework of the CSCE process.

The amendment proposed by Senator FOWLER today, identical to language contained in section 102(c)(2) of the House bill, would remedy this situation. Its adoption would ensure that the Commission, which has served as the lead agency for monitoring CSCE-related matters, is allowed to discharge its statutory responsibilities.

Mr. MOYNIHAN. Mr. President, the thrust of this amendment is simply to ensure that a representative of the Helsinki Commission, as we have come to know it, is present when any meeting or U.S. delegation operating within the framework of the CSCE process proceeds to business relating to the Helsinki accords. I believe this has been cleared by the distinguished manager of the legislation, my good and learned friend, the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair. It is my understanding the distinguished Senator from New York [Mr. D'AMATO] wishes to be here at the time of the consideration of this amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I ask unanimous consent that the distinguished Senator from New York [Mr. D'AMATO] and the distinguished Senator from Arizona [Mr. DECONCINI] be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FOWLER addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. FOWLER. Mr. President, allow me to thank the Senator from New York [Mr. MOYNIHAN] and the Senator from North Carolina [Mr. HELMS]. I had not thought I would be on the floor at the time my amendment was offered and had asked the distinguished Senator from New York to make the presentation on my behalf. I understand it has been cleared on both sides. This is to correct a technicality in the law in the funding for our committee on security and cooperation in Europe, known as the Helsinki Commission, of which I am pleased to serve as a member.

I thank both distinguished Senators for their aid.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MOYNIHAN. I urge the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 274) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, I have an amendment at the desk which was scheduled for debate this afternoon, and which is to be voted on tomorrow.

I understand that the time of the vote has been changed to 2:15. I wonder if the distinguished Senator from North Carolina would think it might be useful if he and I or our colleagues might have 5 minutes each before that vote tomorrow to summarize our positions.

Mr. HELMS. Mr. President, if the distinguished Senator will yield, let us make that 10 minutes each, because I think Senator DOLE may wish to address the amendment.

Mr. MOYNIHAN. Fine.

Mr. HELMS. Five minutes for him and other Senators.

Mr. MOYNIHAN. Ten minutes on each side.

Mr. HELMS. Yes.

Mr. MOYNIHAN. Prior to the vote on the amendment now being discussed, and pending the clearance of the leaders, we would ask that 10 minutes on each side be reserved. That is not a request to be settled at this point, but I would like to note how we wish to proceed.

The PRESIDING OFFICER. That would be in addition to the 3-hour time ordered?

Mr. MOYNIHAN. That is right. But I do not now request that. I will make the request in due time.

The PRESIDING OFFICER. The request would then be that the vote occur at 2:30?

Mr. MOYNIHAN. That would approximately be the case, yes.

AMENDMENT NO. 268

(Purpose: To prohibit soliciting or diverting funds to carry out activities for which the United States assistance is prohibited)

The PRESIDING OFFICER. Does the Senator wish to proceed on his amendment?

Mr. MOYNIHAN. I would wish to proceed to the immediate consideration of the amendment, and the unanimous consent request will be made in due time.

The PRESIDING OFFICER. That being the case, the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN] proposes an amendment numbered 268.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 10, after line 18 insert the following:

SEC. 111. PROHIBITION ON SOLICITING OR DIVERTING FUNDS TO CARRY OUT ACTIVITIES FOR WHICH UNITED STATES ASSISTANCE IS PROHIBITED.

Chapter 1 of part III of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following new section:

"SEC. 620F. PROHIBITION ON SOLICITING OR DIVERTING FUNDS TO CARRY OUT ACTIVITIES FOR WHICH UNITED STATES ASSISTANCE IS PROHIBITED.—

"(a) PROHIBITION.—(1) Whenever any provision of United States law enacted on or after the date of enactment of the Foreign Relation Authorization Act, Fiscal Year 1990, expressly prohibits all United States assistance, or all assistance under a specified United States assistance account, from being provided to any specified foreign region, country, government, group, or individual, then—

"(A) no officer or employee of the United States Government may solicit the provision of funds or material assistance by any foreign government (including any instrumentality of agency thereof), foreign person, or United States person, and

"(B) no United States assistance shall be provided to any third party,

if the provision of such funds or assistance would have the purpose or direct effect of furthering or carrying out the same or similar activities, with respect to that region, country, government, group, or individual, for which United States assistance is prohibited.

"(2) As used within the meaning of paragraph (1)(B), assistance which is provided for a particular purpose includes assistance provided under an arrangement conditioning, expressly or impliedly, action by the recipient to further that purpose.

"(b) PENALTY.—Any person who violates the provision of subsection (a)(1)(A) (relating to solicitation) shall be imprisoned not more than 5 years or fined in accordance with title 18, United States Code, or both.

"(c) APPLICABILITY.—The provisions of this section shall not be superseded except by a provision of law enacted on or after the date of enactment of the Foreign Relations Authorization Act, Fiscal Year 1990, which specifically repeals, modifies, or supersedes the provisions of this section.

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'person' includes (A) any natural person, (B) any corporation, partnership, or other legal entity, and (C) any organization, association, or other group;

"(2) the term 'United States assistance' means—

"(A) assistance of any kind under the Foreign Assistance Act of 1961;

"(B) sales, credits, and guaranties under the Arms Export Control Act;

"(C) export licenses issued under the Arms Export Control Act; and

"(D) activities authorized pursuant to the National Security Act of 1947 (50 U.S.C. 410 et seq.), the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), or Executive Order Number 12333 (December 4, 1981), excluding any activity involving the provision or sharing of intelligence information; and

"(3) the term 'United States assistance account' means an account corresponding to an authorization of appropriations for United States assistance.

"(e) CONSTRUCTION.—Nothing in this section shall be construed to limit the full Constitutional powers of the President to conduct the foreign policy of the United States.".

The PRESIDING OFFICER. Senators are advised that the 3-hour time limit has now begun.

Mr. MOYNIHAN. I do thank the Presiding Officer. Let us proceed with a debate which, Mr. President, I dare to think may have consequences larger than are now envisioned for the future conduct of American foreign policy.

I would like to say at the outset that in offering this amendment, which is entitled "Prohibition on Soliciting or Diverting Funds To Carry Out Activities for Which the United States Assistance Is Prohibited," I do so on behalf of a unanimous Committee on Foreign Relations. I would make the explicit point that the vote was a voice vote. No objection was heard. It was the clear impression that the committee was entirely in support of this measure.

I would make the second point that the measure as approved was amended by the distinguished manager on the minority side of this legislation, the Senator from North Carolina. After observing that we were placing clear restraints on certain activities and criminal penalties thereon, the distinguished Senator added a proposal which simply reads:

Nothing in this section shall be construed to limit the full constitutional powers of the President to conduct the foreign policy of the United States.

Mr. President, that is a matter with which the committee is in the fullest agreement. It is our purpose not to impair those powers but, rather, to give them the measure of efficacy and security without which such extraordinary executive responsibilities cannot be carried forward.

Mr. President, if I were asked the constitutional question as to wherein this legislation arises—and this legislation does concern matters of constitutional consequence—I would cite article I, section 8. This provision is known as the necessary and proper provision, which states that Congress shall have the power, and I quote, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Those foregoing powers enumerated in section 8 are singularly associated with foreign policy, with defense policy, with the question in particular of the Congress shall have the power to define and punish offenses against the law of nations; to declare war, grant letters of marque and reprisal and make rules concerning captures on land and water; to support and raise armies; to provide and maintain a Navy; to make rules for the government and regulation of the land and naval forces.

Mr. President, there is no question about this legislation being necessary. In the 2 past years, we went through an extended and divisive inquiry into the practices in the executive branch which clearly contravened the will of Congress, as stated in various amendments, but which took place even so. The level of concern in the executive branch was every bit as intense as ours.

Mr. President, I would call attention to the previously secret, now declassified, minutes of the National Security Planning Group meeting on June 25, 1984. It was suggested that although the Congress had refused to fund the administration's Contra Program, funds might be solicited from third countries to do so. The Secretary of State, the Honorable George Shultz, a learned, able, and experienced public servant, was reduced to having to say to his colleagues—including the President, the Vice President, the Secretary of State, the Secretary of Defense, the head of the CIA, and the U.N. Ambassador—that "I would like to get money for the Contras also but another lawyer, Jim Baker, said that if we go out and try to get money from third countries it is an impeachable offense." This was wise and honorable counsel from Mr. Baker, now Secretary of State, and was clearly embraced by Secretary Shultz.

What might be the consequence, of such solicitation, the only consequence at hand for the Secretary of State to point to? He said the Chief of Staff of the President had said the President might be impeached. Now, we are not in the business of impeaching Presidents as they make the ever more complex and difficult efforts to execute the laws and to conduct foreign policy.

Had there been such a statute as this on the books at the time, the Secretary of State need not have talked about an incredible and portentous event, impeachment. He could have simply said, "Gentlemen, Ambassador Kirkpatrick, this would be against the law. So it states right here. Jim Baker, my counsel, told me." Therein the matter would have ended, and a great difficulty spared our Nation unless in circumstances the President, for reasons that he chose of his own, determined otherwise.

Mr. President, at this point I ask unanimous consent that an excerpt from the minutes of the national planning group meeting of June 25, 1984, be printed in the RECORD. I also ask that a memorandum from the Chief Counsel of the Foreign Relations Committee, describing how these declassified documents were provided to the Committee be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC, July 17, 1989.

To: Senator Moynihan.

From: Dave Keaney, Chief Counsel, Senate Foreign Relations Committee.

The following documents were provided to the Committee from the Office of the Independent Prosecutor and are part of the unclassified public exhibits to the North trial:

The Memorandum from Constantine Menges for Robert McFarland with the attached MSPG minutes is part of Defendant's Exhibit 58, Tab 4.

Despite the fact that these documents still have Secret markings, the documents have been declassified and were distributed to the public, including the press. They may be used freely in any public debate.

[SECRET]

NATIONAL SECURITY PLANNING GROUP MEETING

JUNE 25, 1984: 2:00-3:00 P.M.; SITUATION ROOM

Subject: Central America (U).

Participants: The President and The Vice President.

The Vice President's Office: Admiral Daniel J. Murphy.

State: Secretary George P. Shultz, Mr. Michael Armacost, and Mr. Langhorne A. Motley.

Defense: Secretary Caspar W. Weinberger, and Dr. Fred Ikle.

OMB: Dr. Alton Keel.

CIA: Mr. William J. Casey, and Mr. Duane Clarridge.

USUN: Ambassador Jeane J. Kirkpatrick.

JCS: General John W. Vessey, Jr., and Admiral Arthur S. Moreau.

White House: Mr. Edwin Meese, III, Mr. Robert C. McFarlane, and Admiral John M. Poindexter.

NSC: Dr. Constantine C. Manges.

MINUTES

Mr. MCFARLANE. The purpose of this meeting is to focus on the political, economic, and military situation in Central America:

Secretary SHULTZ. Several points: (1) everyone agrees with the Contra program but there is no way to get a vote this week. If we leave it attached to the bill, we will lose the money we need for El Salvador. (2) We have had a vote on the anti-Sandinista program and the Democrats voted it down. It already is on the record and the Democrats are on the record. (3) I would like to get money for the Contras also but another lawyer, Jim Baker, said that if we go out and try to get money from third countries, it is an impeachable offense.

Mr. CASEY. I am entitled to complete the record. Jim Baker said that if we tried to get money from third countries without notifying the oversight committees, it could be a problem and he was informed that the finding does provide for the participation and cooperation of third countries. Once he learned that the funding does encourage cooperation from third countries, Jim Baker immediately dropped his view that this could be an "impeachable offense", and you heard him say that, George.

Secretary SHULTZ. Jim Baker's argument is that the U.S. Government may raise and spend funds only through an appropriation of the Congress.

Vice President BUSH. How can anyone object to the U.S. encouraging third parties to provide help to the anti-Sandinistas under the finding? The only problem that might come up is if the United States were to promise to give these third parties something in return so that some people could interpret this as some kind of an exchange.

Mr. CASEY. Jim Baker changed his mind as soon as he saw the finding and saw the language.

Mr. MCFARLANE. I propose that there be no authority for anyone to seek third party support for the anti-Sandinistas until we have the information we need, and I certainly hope none of this discussion will be made public in any way.

President REAGAN. If such a story gets out, we'll all be hanging by our thumbs in front of the White House until we find out who did it.

The meeting adjourned at 3:50 P.M. (U).

Mr. MOYNIHAN. It is the essence of a government of laws, a constitutional government, that congressional mandates must be obeyed. We have in the Constitution the provision to define and punish offenses against the law of nations, and such like matters, to regulate the armed services, and to be more specific to make rules for the government, and regulation of the land and naval forces and such like.

When the Congress makes such rules, they must be obeyed. That is what a system of laws is about.

It is in that spirit that we offer a direct, simple amendment that says what Congress prohibits may not be countermanned. It is a simple, clear message to the executive branch that protects the members of that branch in the carrying out of their duties under instructions from their own superiors. It is particularly pleasing to us on the Foreign Relations Committee that the American Foreign Service Association most emphatically endorsed this measure.

I ask unanimous consent at this point that a letter from the President of the American Foreign Service Association be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN FOREIGN
SERVICE ASSOCIATION,
Washington, DC, May 26, 1989.

Hon. DANIEL P. MOYNIHAN,
Committee on Foreign Relations, U.S. Senate.

DEAR SENATOR MOYNIHAN: The American Foreign Service Association (AFSA) thanks you for your proposed substitute amendment to section 108 of the Foreign Assistance Bill. We appreciate your sensitivity to the difficult circumstances in which foreign service officers are often placed.

AFSA also seeks your support regarding a proposed amendment to the Foreign Service Act that would reinstate the Department of State as the primary insurer of foreign service personnel abroad. This amendment would put into law what Congress expressed as legislative intent in the 1985 Authorization Act—that the Department act as primary insurer for foreign service employees abroad and pay the employee's hospital-related expenses.

Again, AFSA appreciates your support for the integrity of the career foreign service.

Sincerely,

PERRY SHANKLE,
President.

Mr. MOYNIHAN. Mr. President, one general proposition has been advanced in opposition to this matter. It is said, and curiously, it appears to be the view of the Department of Justice, that the amendment impinges upon the constitutional powers of the President. We have an opinion which seems to me to be overly long, as if to display certain lack of confidence. This opinion relies on a broad reading of the Curtis-Wright decision of 1936, in which Justice Sutherland expounded a doctrine that greatly enhances the President's foreign policy powers and responsibilities to the seeming detriment of the Congress. President Roosevelt was simply carrying out the mandate given him by the Congress with respect to an embargo of arms in a war between Paraguay and Bolivia. The Congress had set the foreign policy. You might say the President was executing it.

What are the powers of the President, and what are the powers of the Congress in foreign policy? They are nothing more or less than those described by Alexander Hamilton in the celebrated Federalist Paper No. 75, in which he discusses the treatymaking power. He states simply that with respect to the role of the Congress on the one hand, and the President on the other, there is an intermixture of powers. That this should be so is hardly surprising to us.

It has always been the self-evident case that the President speaks for the Nation in foreign policy. When he wishes to make treaties, he comes to the Congress to receive the Senate's consent of two-thirds of Senators present and voting. The President alone can dispatch ministers and consuls, but their position is sent to the Senate to be approved by a majority vote.

If we go back to the Articles of Confederation, you will remember that for practical purposes we had no executive power, and no executive branch. There was a committee of the States, and one representative of a State would be the committee's president (with a small "p") on a rotating basis. But it did very little and could do very little, and it was that very little that led to the Philadelphia Convention which created our present arrangement.

The particular case of foreign policy attracted the attention of the authors of the Federalist Papers for the simple reason that it attracted the attention of the public at the time.

In Federalist No. 64, John Jay, who was to be our first Chief Justice of the United States, made a very important point. Hamilton later repeats it. The point being that treaties under the Constitution are the law of the land. And only Congress makes the laws.

Well, how are we going to deal with the fact that the President can negotiate treaties? Jay admits it. He said that when treaties are made and are to have the force of laws, they should be made only by men invested with legislative authority. Well, says he, that is not a practicable way to negotiate with a foreign power. But we have come to a practical solution. The President negotiates and then the treaty only comes into force when it has received the advice and consent of the Senate, and not just a majority thereof, but an extraordinary majority: two-thirds present and voting.

Hamilton returned to the question in No. 75 in which he speaks of the intermixture of powers. He, too, notes that a treaty which is the basic agreement in foreign policy partakes more of a legislative than an executive function. Even so, this intermixture of power would distribute nicely a capacity to negotiate and reach agreement. The responsibility of the Senate is then to say, very well, this agreement having been reached, it will now go into effect and be binding as law upon the peoples of the United States and the institutions thereof.

With respect to that intermixture, Mr. President, there is a fine passage from Hamilton which I would like to

quote and then, seeing other Senators present, I would like to yield.

Hamilton says:

The history of human conduct does not warrant that exalted opinion of human virtue, which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.

That wonderfully encapsulates the federalist view of human nature which is, as Mr. Dooley once said, "Trust everybody, but cut the cards." Do not give any one person too much power. See that there are checks and balances, an intermixture, see that certain enterprises can only go forward in combination of executive and legislative concord.

The history of human conduct does not warrant the exalted opinion of human virtue, which would make it wise in a Nation to commit interests * * * to a President.

This is vastly more so now than ever. And in this instance, in this legislation, Congress would stand up and say, Mr. President, you need protection from persons whose names you do not know, or whose activities are concealed from you. They may think they are doing your wishes, but might actually be putting you in a situation where you could be impeached; where, as we saw earlier, your chief of staff said, if they go forward with that plan—and they did—that is impeachable. Well, surely we do not want to affect the stability of the U.S. Government, if we measure the authority of a presidential action by whether or not it would lead to impeachment on the floor of the Senate. This protects the President against persons who may think they serve him well, but in fact serve him badly.

This is needed legislation; that is why the Committee on Foreign Relations brings it to the floor at this time and why I do very much hope that we will see it approved by the body. It was agreed on Friday that the importance of the measure was such that it ought to be taken out of the bill that has come to the floor and presented for clear decision and vote by the whole Senate, which will take place tomorrow afternoon.

Mr. President, I see the distinguished Senator from Pennsylvania.

Mr. HEINZ. Will the Senator yield for a unanimous-consent request?

Mr. MOYNIHAN. Yes.

Mr. HEINZ. Mr. President, I ask unanimous consent that a man working in my office, Mr. Andy Onate, a Pearson Congressional Fellowship Awardee, be allowed the privileges of the floor, as if he were a member of my staff.

The PRESIDING OFFICER. Is there objection?

Hearing none, that is the order.

Mr. HEINZ. I thank the Chair, and I thank my friend from New York.

Mr. MOYNIHAN. Finally, Mr. President, may I note that the distinguished chairman on the Committee on Foreign Relations, Mr. Pell, is a cosponsor and should be listed as a cosponsor of the legislation, as is the learned and able and energetic senior member of the committee, the senior Senator from Maryland [Mr. SARBANES].

Mr. President, I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Chair. Let the record show at the outset that any time that Senator MOYNIHAN and this Senator from North Carolina disagree, we always agree to disagree agreeably. I respect and admire my friend from New York. I know he is sincere, but I believe him to be sincerely wrong for reasons which I shall develop as I go along.

First of all, I am old enough to remember World War II. Not many Members of this Chamber are. The Senator from New York said, "So am I, I am sorry, to say," and I will add that I feel the same way about it sometimes.

Now, Mr. President, when you consider the five Boland amendments and then consider the pending amendment by the Senator from New York [Mr. MOYNIHAN], you realize that the Moynihan amendment is a quantum leap beyond even the Boland amendments, which were confined to the Nicaragua situation. This makes it a generality; everything comes under the tent.

Moreover, this amendment does something the Boland amendments never did—it applies criminal penalties.

Now, I will say this: If Franklin Roosevelt had had to try to prosecute World War II under the restraints by Congress that have been imposed upon the President of the United States in this time by the Boland amendments, and are proposed to be imposed by the Moynihan amendment, World War II may very well have been lost.

All of us of that generation remember the countless secret meetings and arrangements and agreements between Franklin Roosevelt and Winston Churchill, for example. These would have been exluded. They would have been considered criminal acts under the proposed Moynihan amendment.

I do not direct the following comment to Senator MOYNIHAN, but I gained the impression in the political atmosphere that prevails in Washington today that there is an effort to milk that Iran-Contra cow on and on and on into perpetuity. Now, the fact is that the previous President of the United States and his administration were doing everything they could to try to prevent another Communist satellite from surviving in our hemisphere. I think they were right in their efforts.

What we have now is a Communist satellite in Cuba. We have won in Nicaragua. We have the Soviet Union reaching its tentacles throughout our hemisphere, and the Congress in its wisdom, or lack thereof, has consistently hamstrung the efforts to stop this Communist intervention into our hemisphere.

So, Mr. President, for a variety of reasons, I strongly oppose the Moynihan amendment, and I do so with deep respect for its author. I oppose it because it fails to overcome the central constitutional defect of the language which the Senator offered in committee, and therefore, still threatens to bring down this bill.

Let there be no mistake about it, the administration has assured me that President Bush will veto this bill if this amendment is adopted and becomes a part of it. I have a letter from Deputy Secretary of State Larry Eagleburger, the No. 2 man in the State Department, and Acting Secretary while Jim Baker, the Secretary of State, is out of the country. He is therefore writing on behalf of the Secretary of State. I shall present this letter in a moment.

Now, Mr. President, with respect to the committee deliberations on this amendment, I think there is a need to elaborate just a little bit on the facts as I recall them. There was discussion at the time of the approval of this amendment in committee that the distinguished Senator from New York might be able to work out an acceptable version of his amendment with representatives of the administration.

Indeed at one point the Senator from New York indicated he would be willing to forego offering the amendment on the Department of State authorization bill, the pending bill, and would instead be willing to await the foreign aid bill then pending in committee.

Ultimately, the Senator from New York did offer his amendment, and it was as he has indicated, accepted on a voice vote after having been modified by a suggestion made by this Senator from North Carolina.

Certainly, it was my anticipation that further efforts would be made to arrive at a compromise acceptable both to Senator MOYNIHAN and to the administration because a vital constitutional principle was and still is at stake.

Unfortunately, those discussions, whatever they were and however many there were, have not to this point produced a version acceptable to the administration because of the flawed constitutional defect. Indeed,

the seriousness of the administration's position will be made clear when I read Mr. Eagleburger's letter shortly.

Mr. President, I ask unanimous consent to insert at this point in the RECORD portions of the transcript surrounding the committees's discussion of the Moynihan amendments—then cited as sections 107 and 108 of the chairman's mark—on May 18, 1989.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

Senator HELMS. Mr. Chairman, even though we have no quorum, there is no Senate rule prohibiting discussion of any amendment. We might save a little time if we call up sections 107 and 108 on page 17.

I would like for the relevant——

The CHAIRMAN. Excuse me, but what page is that?

Senator HELMS. It's page 17 of the markup.

I would like the administration's comments on this proposed provision.

I think it is proper to revisit Senator Dodd's comments the other day.

Part of the way this bill has a chance of survival through the Senate, and with the House and through a successful Conference, is if the administration is on board.

I would ask the State Department spokesman, person, people, to come forward so that we may hear from them.

These provisions would appear to be calculated to relive the Iran-Contra matter. We are already doing that with various nominations, and Gregg and Negroponte come to mind. I would hope that we would leave it at that and not get to legislating on it.

Now, my observation would be that if the Committee persists in highly objectionable provisions, such as 107 and 108, we are going to hanging an anchor around the bill that will sink it.

Now, may I suggest that since both amendments could easily be considered in the context of the Foreign Aid Bill, that we take them off of this bill and talk with the administration people, the lawyers in particular, and see if some reasonable compromise can be achieved in time for the Committee's deliberations on the Foreign Aid Bill, which I assume will be in June.

Now, I wonder if you have any comments. Do you agree with me or disagree with me, or what?

The CHAIRMAN. May I interpolate here, too?

Senator HELMS. Sure.

The CHAIRMAN. My understanding of this provision is not that it is retroactive, but that it is forward-pointing, to try to prevent a repetition of what may have happened in connection with "Irangate."

Ms. CUMMINS. Good morning. I am Sally Cummins from the Office of the Legal Adviser.

I do not have a fully cleared administration position on this amendment. Certainly no one in the administration is averse to being told to obey the law, and I'm sure that that's the way some people perceive this amendment. However, when you look at the specifics of the law, all parts of the administration, both foreign policy and criminal law enforcement aspects, have raised very serious concerns about these particular provisions.

I would welcome the idea of striking them from this bill and giving more time for the administration to work with you to see if there is something that would be much narrower, much more specific, much more to the point, as we perceive it, that could be worked out in time for the Foreign Aid Bill.

I would be happy to give you our views about particular concerns that have been raised throughout the administration if that would be useful at this time.

Senator HELMS. It would be useful.

The CHAIRMAN. Excuse me, but had you finished?

Ms. CUMMINS. I was going to go ahead and give you some idea of the various concerns that have been raised.

The CHAIRMAN. Please go ahead.

Ms. CUMMINS. I think the first one, the one that weaves its way through all of this, is the great concern about the criminal sanctions in this bill.

First of all, this bill adds criminal sanctions to provisions that are not criminal in themselves. As we perceive the way this would be intended to be applied, it would be applied to statutes that, by and large, prohibit the use of U.S. funds for particular purposes.

There is no criminal sanction for using U.S. funds for promoting law enforcement efforts, for instance, in a foreign country. It's prohibited, but it's not criminal if someone does it.

Now this comes along and puts a subsidiary criminal sanction in the context of these amendments. That seems an inappropriate use of criminal penalties.

More serious is that the amendments are drafted so that I think it would be almost impossible for anyone to know when they were going to be subject to these criminal penalties. I think you would get into serious concerns about vagueness for criminal sanctions.

Section 107, for instance, prohibits the solicitation of funds for any purpose that would violate an objective of a law, of a United States law. That is an extremely vague prohibition, leaving everyone, including the President, to guess what the objective of a particular law is or would be found to be, rather than criminalizing a particular activity.

Similarly, in section 108, there would be criminal sanctions on giving aid that has the purpose or effect of violating a U.S. law. Again, it is almost impossible for anyone to know ahead of time precisely what aid will be used for, and to be found retrospectively that some aid ended up being used with an effect that violates U.S. law is really an impossible kind of criminal standard.

The kind of laws we are talking about here also raise serious concerns. The example I gave before, which I think is section 60 of the Foreign Assistance Act, that prohibits the use of U.S. funds to promote law enforcement efforts in a foreign country, is geared to conserve scarce U.S. resources. There is no effort there to say that for some reason we totally oppose law enforcement efforts or that we think it is inappropriate for other countries to fund their own law enforcement efforts.

Yet, as I read section 107, we could not talk to a foreign government about using its own funds to support its own law enforcement efforts without violating section 107.

It is not a practical law, as drafted.

I think that is reaches far too broadly in ways that are simply not practical and I assume were not intended by the drafters.

Finally, of course, particularly because of the criminal sanctions and the overlap between other laws, it is certainly an intrusion on the President's ability under the Constitution to carry out his responsibilities and obligations to conduct foreign policy. If all diplomatic conversations, if the administraton of the Foreign Assistance Program, if intelligence conversations are constantly being second-guessed and monitored for the possibility that something will end up having the effect of violating a U.S. law or will violate the objective of a U.S. law, this is surely an intrusion on the President's constitutional role in the carrying out of foreign affairs.

As I said in the beginning, it is not that anyone objects to being told to obey the law. I think we understand where this is coming from. But anything that tries to reach as broadly as these provisions do, and with criminal sanctions is not an effective, or, really, a realistic way to approach the problem.

The CHAIRMAN. As I mentioned before, this is not in any way an effort to dig up what has gone by. It is to prevent in the future certain abuses that we both agree should not take place. If the language should be refined or made more specific, then we would welcome suggestions in that regard.

I would recognize now the Senator from North Carolina.

Senator SANFORD. I was simply going to inquire here.

You said that you would be glad to work with the Committee to find some approach to this proposition. But your position actually is that you would just as soon not have it in here at all?

Ms. CUMMINS. I think that is probably correct, given the seriousness of all the reservations that have been raised throughout the administration about the workability of these particular provisions.

Senator SANFORD. Thank you.

The CHAIRMAN. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I certainly appreciate the concerns that have been expressed.

I would like to speak for a constituency which is rarely heard in our councils, which is the officers of the Department of State, the officers of our intelligence agencies.

They have, as they come to learn in painful circumstances, been placed in a position where they are asked to do things which are questionable at law and are put in a situation where somehow it is said to them that their loyalty to individuals or to programs or to policies has to overcome any commitments of their oath of office.

It is an intolerable thing to do, Mr. Chairman, in my view.

I have been an ambassador twice—once overseas and once in the United Nations. I have dealt with intelligence officers, I have dealt with career officers, I have dealt with it all. All there is to know about these matters I have known.

I have dealt with the most sensitive of espionage activities, the most delicate possible relations between our two countries, and I always felt that what was strongest in the incredible demands we put on people—people who put themselves in harm's way and anonymously, and if it all went wrong, they got a little, gold star on a wall over in Langley, and no other comments—but at least they knew they always had the realization that they had the Constitution of the United States behind them, and an Executive whose oath states the following. The President says, "I do solemnly swear or affirm that I will faithfully execute the Office of President of the United States and will, to the best of my ability, preserve, pro-

tect, and defend the Constitution of the United States."

He shall take care that the Constitution, and it says "that the laws be faithfully executed."

Now, if the State Department wants to come to us and say that they don't feel that their officers need to take care that the laws be faithfully executed, I don't recognize that State Department, and I don't think it is paying attention to the needs of the men and the women in the field. Those men and women who have left this town under a cloud, who could always be explaining where they were, what they did, and why, it is not fair to them, it is not fair to the institutions they represent.

This amendment very simply says that you may not do anything that would violate our laws, and it is there to protect the persons who are being told to violate the laws, and they have done so up and down at the Department of State.

I am really a little surprised. I know what the people in the last few years have thought, how nearly they have come to resign, how bitterly they felt, and how betrayed they felt.

This is to protect our people, Mr. Chairman.

Very rarely do I invoke a personal experience in this Committee, but I invoke it here. Our people need this protection, and it is for them I am thinking. I would hope we would adopt it.

The CHAIRMAN. I thank the Senator from New York for his very compelling observations.

Senator HELMS. What does the Chairman think about the proposition of moving this provision over to the Foreign aid bill taking it out of this and at least let the administration consult and have some input.

The CHAIRMAN. I would be very interested in the reaction of the Senator from New York, whose amendment this is.

Senator MOYNIHAN. Could I ask my friend from North Carolina what he would have in mind?

Senator HELMS. Well, I can't speak for the administration on that except that they have difficulty with this. I think they have not been consulted up to now, and we are talking about whether the administration will support this bill, along with a lot of other Senators, who have their own feelings about what has gone on with respect to the Congress inhibiting the President's authority with respect to the foreign policy in Central America.

Now, I don't want to get into a debate about that, but this thing has at least two sides to it. The Senator, eloquent as he is, has not alluded to the fact that there is concern about the implications.

One thing the lady [referring to Sally Cummins, a lawyer with the State Department's Office of Legal Adviser] said, among others, is how do you know whether you are violating the law or not. An after the fact judgment is made, and I think at least Senator, and I say this with all respect and friendship, because I admire you, that the administration ought to have some input. If we don't take it, that's our business. But I think they ought to have an opportunity to sit down with us and/or our staffs and say this is what we would prefer and here is why we would prefer it.

I don't see anything wrong with that. That is the normal legislative process when you are trying to make an arrangement with the administration.

Senator MOYNIHAN. May I say to my friend that I would be happy to do that. I don't want to hold up the bill.

Does the Chairman want to report out this bill today?

The CHAIRMAN. My hope is to close up the legislative portions of the State Department Authorization Bill today.

Senator MOYNIHAN. All right.

Then why don't we go into the back room and discuss it? Would that be helpful.

I have two amendments, Mr. Chairman, just to clarify the legislation, which I would like to offer.

Senator HELMS. I, too, have a number of amendments, including one relating to the PLO, which has not been acted upon. And I have tried to bring it up, and tried to bring it up, and tried to bring it up.

Now, the Chairman feels that there is a decided lack of interest among the Committee Members in this bill. He has put out a letter, which borders on being an ultimatum, and I can understand his frustration. I have been a Chairman, too, and I know it is to sit around and wait for a quorum.

But what I am saying is why don't we move this out of this bill, put it on the Foreign Aid Bill, which is next in line, and in the meantime work it out.

I don't think that this lady, from what she has said, is prepared to go back and speak for the administration.

Ms. CUMMINS. That's correct.

Senator MOYNIHAN. That's a perfectly fair offer, sir.

This basically pertains to foreign aid, if that would help the Chairman as he wants to move the bill.

The CHAIRMAN. It would, with the understanding that there would be a good faith effort between the representatives of the Department, Senator Moynihan and Senator Helms to resolve this.

Senator MOYNIHAN. Well, I want to hear that from the department. I mean, boy they are sweet when they are coming up here looking for confirmation. But then you put in a little provision which says that they ought to obey the law, and they say what's this, you're interfering with the constitutional prerogative of the President of the United States. To do what—to break the law?

Is it your view that a President has the authority to break the law.

Ms. CUMMINS. No, Senator Moynihan. We certainly are not objective to being told to obey the law.

Senator MOYNIHAN. Well, then, what are you objecting to?

Ms. CUMMINS. Well, as I said before, it is because——

Senator MOYNIHAN. It says you have to obey the law.

Senator HELMS. Now let her answer.

Senator MOYNIHAN. All right. Fair enough.

Ms. CUMMINS. It says—first of all, we think there are some laws that this was probably not intended to reach, such as prohibition of U.S. funds to support law enforcement efforts in foreign countries. We do not truly believe that it is intended that under section 107 we, therefore, shouldn't be talking to a foreign country about supporting its own law enforcement efforts. Yet that would be the effect.

Senator MOYNIHAN. We can clarify that. That's not what we're dealing with. You know that.

Ms. CUMMINS. Well, section 107 would do that.

More seriously, since 107 talks about objectives of U.S. law——

Senator MOYNIHAN. We have offered an amendment which clearly would preclude any such considerations, and you have that amendment.

Ms. CUMMINS. No, sir. I have seen nothing except what is in the print of S. 928.

Senator MOYNIHAN. Well, Mr. Chairman, I am more than happy to accept the understanding that we will deal with this on foreign aid.

But I would like to say that this is not a very happy beginning and this is something—where is Mr. Baker today?

Ms. CUMMINS. He's in the country.

Senator MOYNIHAN. Are you speaking for him?

Ms. CUMMINS. I do not have an official administration position on this bill.

Senator MOYNIHAN. Oh, now wait, Mr. Chairman, Well, all right. We don't have an official administration position, so we are not locked into anything, so we might work it out.

Ms. CUMMINS. We would certainly work with you.

Senator MOYNIHAN. I would have to say to you that it would be pretty alarming to me to have found that the Secretary of State sent a message to us. It is not a message he wants to send, if he wants to have a happy life as Secretary of State.

[General laughter.]

Senator MOYNIHAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

Then, with that understanding of good faith negotiations on the part of the department, Senator Moynihan and Senator Helms, we will lay this aside and attach it to the Foreign Aid Bill when that comes out.

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Senator MOYNIHAN. Mr. Chairman, I wonder if I could return to that matter of earlier, to say that, with great respect, we have had a problem from time to time, in recent years, of amending, of seeing that the Foreign Aid Bill actually be enacted. We are going to try to make sure that it is this year.

But what I would like to do, in absolute good faith, is I want to talk with the Secretary of State about this matter. The Secretary of State, after all, is quoted in a very handsome way in a meeting of the National Security Planning Group at a time when some issues of this kind arose. Secretary Shultz quoted Mr. Baker, then Chief of Staff, as saying that the U.S. may raise and spend funds only through an appropriation of Congress, and that soliciting money from third countries is an impeachable offense.

We're protecting the President of the United States here. Jim Baker, as Chief of Staff, said that that's an impeachable offense, and he said I'm not going to let that happen to my President.

I think he would want this legislation.

What I would like to do, Mr. Chairman, if it can be worked out, is, in absolute good faith, move the amendment as amended, and then offer to sit down with the Department of State and my good friend from North Carolina, and see how they would like it changed, and then we'll offer those changes on the floor.

Senator HELMS. Well, I thank the Senator. That's what I had proposed in the first place.

I thank the Senator for his willingness to do that.

Senator MURKOWSKI. You now have seven of us again.

Senator HELMS. Excuse me, but did the Senator say to move it out of this bill?

Senator MOYNIHAN. No, sir.

Senator HELMS. Oh, I misunderstood.

Senator MOYNIHAN. I'd like to put it on this bill and then change it. If we could be persuaded, and no doubt we can, that there are amendments needed, then we'll offer them on the floor.

The CHAIRMAN. In other words, the Senator desires a vote on this.

Senator MOYNIHAN. Yes, sir. I desire a vote on the amendment, as amended.

Senator HELMS. What is the pending business?

For the record, let the record show that I yielded to Senator Moynihan for this conversation. He did not know that I had the floor.

Senator MOYNIHAN. I'm sorry, and I appreciate your courtesy.

Senator HELMS. Oh, no problem. No problem.

Now, the pending business, Mr. Chairman, as I understand it, is the U.N. allowance amendment, is that correct?

The CHAIRMAN. That is correct. As a matter of orderly procedure, if you like, we were on that and we can vote on that. But I think that Senator Moynihan is correct in raising this subject now, close to the time when it was being discussed.

So I would say that we ought to vote on the U.N. allowance, and then vote on Senator Moynihan's item, and then come back to Blair House and PFIAB.

Senator HELMS. Okay.

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The CHAIRMAN. Now I must turn to Senator Moynihan and recognize Senator Moynihan.

Senator MOYNIHAN. Thank you, Mr. Chairman.

I would offer an amendment in the nature of a substitute for the amendment in 107. It is a clarifying amendment, and simply addresses some of the concerns which I believe have been raised by the Department of State.

We provided the revised version at least a month ago. In any event, sir, it simply prohibits the solicitation of funds to further illegal activities. I consider it to be a protection to the career officers of our intelligence services and our diplomatic services.

I have made my point and would be happy to hear others. I would ask for a vote.

I also would like to specify that I will sit down with the Secretary of State or his designee, or Ms. Mullins, and anyone else in the Executive Branch, and of course with anyone on this Committee, to see if there are, in fact, tighter languages or some unanticipated matters that we should deal with, and we will deal with them on the floor.

The CHAIRMAN. I thank you very much.

Is there further discussion or can we vote?

Senator MURKOWSKI. Vote.

The CHAIRMAN. The Clerk will call the roll on the Moynihan amendment.

Senator HELMS. Mr. Chairman, please, just one minute.

The CHAIRMAN. Senator Helms.

Senator HELMS. Let me come into the breach, here. I don't think the Senator from New York would object to this addition to this provision: add at the end of both sections 107 and 108, insert the following: "Nothing in this section shall be construed to limit the full constitutional powers of the President of the United States to conduct foreign policy."

Senator MOYNIHAN. I have no objection whatever, sir.

Senator HELMS. Thank you, sir.

I would assume that the Chairman, by unanimous consent, will accept that modification of the amendment.

The CHAIRMAN. So now the question is on the Moynihan amendment, as amended.

I don't know if we need a roll call vote on this or if everybody is in favor of it.

Is anybody not in favor of it? Does anybody want a roll call vote?

Senator HELMS. Inasmuch as it can and probably will be revisited on the floor, I suggest a voice vote on it.

The CHAIRMAN. A voice vote.

All those in favor of the Moynihan amendment, as amended, say aye.

[Ayes]

The CHAIRMAN. All those opposed?

[No response]

The CHAIRMAN. It is unanimously agreed to and a quorum is present.

Now, the proposal has been changed to make it prospective from fiscal year 1990, but it still asserts that Congress has the right to restrict the constitutional authority of the President of the United States to conduct foreign policy.

The fact is that Congress has only the authority to regulate funding for foreign relations policies. It has absolutely no power under the Constitution to limit the President's ability to make and execute foreign policy.

Specifically, Senator MOYNIHAN's amendment, now pending, provides that whenever any U.S. law expressly prohibits U.S. assistance to any foreign region, country, government, group, or individual, no officer or employee of the U.S. Government may solicit funds or material assistance from any foreign government, foreign person, or U.S. person, for that matter, if the solicited funds would have the same effect as the prohibited U.S. Government assistance.

This does not even make good nonsense, because the Government does not have the constitutional authority to do that.

Moreover, all U.S. assistance of any kind could be cut off under the amendment, which cuts off any aid to any third party that might otherwise be in line to receive assistance.

So where does that leave us? To put it as simply as I know how, the pending amendment would impose criminal liability upon any Government officer or employee who solicits funds from private or foreign sources to execute the President's policy when Congress itself has refused to supply Government funds.

You go back and you examine some of the decisions and agreements of Franklin Roosevelt during World War II and you would see the kind of obstacles that would have blocked President Roosevelt in the prosecution of World War II.

Under the amendment, if a foreign government receiving U.S. aid should fund actions that Congress will not pay for, then all aid to that country would be cut off. Let me reiterate: That goes far beyond any power the Congress has under the Constitution of the United States. If Congress will not put up the money for our President's policy, that is fine. The Congress can do that. But if the President's policy does not depend on U.S. Treasury funds, then the Constitution allows the President full power to fund it from nongovernment sources.

It is not hard to understand why the President is so adamant against this proposal for the fact is that it goes to the heart of the President's powers under the Constitution. And bear in mind, we are talking about any President, this one or a subsequent one, Democrat or Republican, or whatever.

It is a direct, explicit, and conscious attack on the separation of powers, and this is nothing less than an attempt by Congress to criminalize foreign policy.

(Mr. GLENN assumed the chair.)

Mr. HELMS. Mr. President, the limitation on the foreign policy powers of the President in the Constitution are few. If the President nominates an Ambassador, the Senate must concur in that appointment before the President's choice can become an Ambassador. If the President negotiates a treaty, as Senator MOYNIHAN has pointed out, two-thirds of the Senate must concur before the treaty can be ratified by the President and, of course, only the Congress can declare war.

Finally, Congress has the power to withhold the appropriations necessary to provide the means to execute a policy if it disagrees with that policy. But please observe carefully, Mr. President, that Congress has only the power of the purse, period.

Congress has no constitutional power to prohibit, let alone criminalize, a foreign policy which any President wishes to pursue. If the policy can be implemented without the expenditure of funds, Congress can have no effect on the outcome in any manner under the Constitution of the United States.

What this means is that the President of the United States under the Constitution can pursue any foreign policy he wishes if no funds are required to provide economic assistance or weapons of war or armies or the use of agencies of the Government.

Not only is the President allowed under the Constitution to pursue any such policy, but he has the moral obligation to pursue such a policy if he believes that it is in the best interest of the United States. Certainly Ronald Reagan made it clear over and over again his grave concern about the Soviet Union's intrusion into our hemisphere.

Who can forget Fidel Castro and the Communist government there? Look what happened in Nicaragua; and the

Soviet tentacles are reaching into other countries including right now Mexico.

So the President of the United States has a duty to oppose Congress with every proper means at his command so long as he believes the national interest requires it.

Now, the President may very well have to pay a political price for such a position, and that is part of it, too. If cooperation with Congress breaks down entirely all policies may come to a standstill. The President's opposition to Congress may indeed anger the people of the United States to the extent that the President may not be reelected if he runs for another term; or the people may be so angered at Congress that Congressmen and/or Senators may be replaced. But that is in the political arena. It is not in the legal or constitutional arena.

So in the long run the only constitutional sanction against the President is impeachment.

I say this knowing full well that it is a doctrine that cuts two ways. I have in my 16½ years in the Senate disagreed with the President of both parties, and I have said so. I am not a nervous Nelly about doing that. And I have attempted on a number of occasions to use constitutional tools that are at the proper command of Congress to try to get the message across.

And I do not think there is anything wrong with that. But I also realize that under the doctrine of separation of powers, the President is and must continue to be relatively free to do what he thinks is best in the area of foreign policy.

Therefore, Mr. President, the pending amendment is constitutionally unsound, in my judgment. It is fatally flawed. It is a rather obvious attempt by Congress to usurp powers that belong to the President under the Constitution and under the American system.

There are some who would reduce the President to a mere figurehead as though we had a parliamentary form of government in this country. We do not. In short, this is such a bold threat to the very heart of the American system that I think all Americans would rise up if they were aware of what is at stake.

Now, for the letter from Secretary Eagleburger, dated July 17. It reads:

DEAR SENATOR HELMS: I understand that on Friday the Senate deleted sections 111 and 112 from S. 1160 and agreed to consider a substitute section 111 offered by Senator Moynihan. The substitute language would apply to U.S. laws enacted on or after the date of enactment of this act, which prohibit all U.S. assistance, or all assistance under a specified account, to any specific foreign region, country, government, group or individual. The provision would impose criminal penalties on U.S. Government employees who solicit the provision of funds or material assistance by any foreign or domestic entity, and prohibit the provision of U.S. assistance to any third party, if the funds or assistance would have the purpose or direct effect of furthering or carrying out the "same or similar activities" for which assistance is prohibited. Furthermore, this provision can be superseded only by a provision of law that specifically repeals, modifies or supersedes it.

While we appreciate Senator Moynihan's willingness to consider modifications of his previous proposals, the new section 111 is still unacceptably vague, impossible to administer, and an impermissible intrusion on the President's constitutional prerogatives. Such a provision is unnecessary to achieve compliance with statutory limitations on spending. Moreover, it would have a serious detrimental effect on the conduct of U.S. diplomacy and the administration of U.S. assistance programs, and would unfairly expose U.S. officials to potential criminal liability in cases where they would have no reason to believe that their conduct was unlawful. The Administration is strongly opposed to the new section; we would recommend that the President disapprove the bill if this provision is included in final passage.

The proposed amendment is essentially an attempt to prescribe to future Congresses what consequences should flow from any prohibition on assistance which they may choose to adopt. It is an attempt to convert all future assistance prohibitions into criminal statutes which encompass a wide range of actions other than the provision of assistance to the country in question. There is absolutely no need for such a provision. U.S. assistance programs are already subject to the Anti-Deficiency Act and a host of other legislative and regulatory provisions. If in a particular future case Congress wishes to adopt additional measures or to expand the scope of a prohibition in a particular case, it should consider such actions in light of the specific circumstances it may be dealing with at that time. Each Congress should craft its own solutions, and not be hampered by the need specifically to undo prior sweeping measures such as the current proposed amendment.

Furthermore, the language of the proposed amendment is extremely vague and would be virtually impossible to administer. It refers, for instance, to assistance to a third party or solicitation of funds where the "purpose of direct effect" would be to further or carry out "the same or similar activities * * * for which United States assistance is prohibited." But statutory prohibitions on assistance to particular countries usually do not specify a series of activities for which assistance is prohibited, and as a result the proposed amendment could be interpreted to apply to all activities for which U.S. assistance could have been provided to a particular country but for the prohibition. This would include virtually all forms of economic activity in the country in question, as well as most forms of military, political and governmental activity.

The result would be to sanction—in some instances with criminal penalties—any encouragement by U.S. Government officers or employees (including members of Congress) of any assistance by anyone for virtually any activities in the specified country, and any U.S. assistance to a third country which has the direct effect of furthering any such activities. This would severely inhibit any dialogue with governmental or business leaders of such a country, and in the case of assistance to other countries, it would be almost impossible to determine whether any particular assistance would have the effects prohibited. For example, economic assistance of any significance to a neighboring country could have a direct stimulating effect on economic activity in the country to which aid is prohibited.

As a result, this proposed amendment could have many undesirable results probably not intended by its sponsor. For instance:

The annual Foreign Operations Appropriations Act typically includes a prohibition (e.g., section 550 of the 1989 Act) on all assistance to a series of countries, including Angola and Cambodia. Significant economic aid to a country bordering any of these could well have a direct stimulating effect on economic activity in the named country, and accordingly could be seen as violating the proposed amendment.

The 1989 Foreign Operations Appropriations Act prohibits all assistance to the Noriega regime in Panama. If that were reenacted in a later year, the proposed amendment could be interpreted to mean that we could do nothing that would have a direct stimulating effect on economic activities in Panama so long as Noriega is in control. Yet the United States obviously engages in activities that have exactly that effect—most notably through our involvement in the operation of the Canal and our maintenance of U.S. forces in Panama.

The Foreign Assistance Act prohibits assistance to a group of Communist countries (including Poland and Hungary). If the pending International Cooperation Act of 1989—which effectively reenacts the Foreign Assistance Act in modified form—is enacted into law, any attempt to encourage economic development in those countries through others would be prohibited. We would, for instance, have to distance ourselves completely from the effort to promote development in Poland.

Two more paragraphs and I shall conclude the reading of Mr. Eagleburger's letter. I am reading this letter into the RECORD for a purpose. I want all Senators who may be listening in their offices to understand fully the administration's position.

Mr. Eagleburger concludes:

Most important, this proposed amendment would seriously impair the President's ability to carry out his Constitutional responsibility to conduct relations with foreign governments and to administer U.S. assistance programs. In effect, it would constitute a pervasive regulation of the conduct of diplomatic conversations, which would be under the constant shadow of the possible imposition of criminal or civil liability if later deemed to further some prohibited activity or to have some prohibited effect. This would apparently be so, moreover, even in the absence of any specific intent on the individual's part to violate the law. The same danger would be present in the administration of foreign assistance programs and sensitive intelligence contracts. These are matters assigned by the Constitution to the President, and Congress cannot, and should not, attempt to hamstring the President with such overreaching and inappropriate prohibitions. (These constitutional aspects are dealt with at greater length in the June 20 letter of the Justice Department.)

In closing, I would simply state that the Secretary and I are fully mindful of the concerns behind this proposal. You can be confident that even if there were no prohibi-

tions on the books against the use of indirect means to take illegal actions, this kind of activity on the part of Administration officials would never arise. By working together we can accomplish much more than would result from imposition of legislation that so threatens the proper role of the executive.

Sincerely,

LAWRENCE S. EAGLEBURGER.

Mr. President, I ask unanimous consent a letter dated June 17, 1989, from Assistant Attorney General Carol T. Crawford to Senator MITCHELL also be printed in the RECORD at this point, and I yield the floor.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 17, 1989.

Hon. GEORGE J. MITCHELL,
Majority Leader, U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: This letter presents the views of the Department of Justice on Senator Moynihan's proposed amendment to S. 1160, "the Foreign Relations Authorization Act for Fiscal Year 1990." The amendment would strike sections 111 and 112 of the Committee Print of the bill and substitute a revised section 111.

While Senator Moynihan's amendment is marginally narrower in certain respects than sections 111 and 112 of the Committee Print, the amendment contains the same grave and fundamental constitutional problems that previously led the Department to oppose sections 111 and 112. Accordingly, unless our constitutional concerns are addressed, the Department will recommend that the President disapprove any bill that contains either section 111 as amended by Senator Moynihan or sections 111 and 112 of the Committee Print.

The President has the responsibility, under the Constitution, to determine the form and manner in which the United States will maintain relations with foreign nations. *E.g.*, U.S. Constitution, Article II, sections 1, 2 and 3; *Haig* v. *Agee*, 453 U.S. 280, 291-92 (1981); *Baker* v. *Carr*, 369 U.S. 186, 212, 213 (1962); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20 (1936). Several provisions of the amendment impermissibly intrude upon that authority.

Section 111 as amended would amend the State Department Basic Authorities Act of 1956 to prohibit "officers or employees of the United States Government from soliciting the provision of funds or material assistance by any foreign government (including any instrumentality or agency thereof), foreign person, or United States person * * * if the provision of such funds or assistance would have the purpose or direct effect of furthering or carrying out the same or similar activities, with respect to that region, country, government, group, or individual, for which United States assistance is prohibited." We believe this provision is both unconstitutional and unwise.

This provision appears designed to prohibit, among other things, consultation between the United States and another sovereign nation regarding actions that nation may wish to undertake. Any such limitation on the President's authority to discuss certain issues with foreign governments, or to recommend or concur in courses of action taken by other nations, would pose the gravest constitutional problems. In particular, it has long been recognized that the President, both personally and through his subordinates in the executive branch, determines and articulates the Nation's foreign policy. *See* statement of John Marshall, 10 Annals of Cong. 613 (1800); *Curtiss-Wright, supra*, 299 U.S. at 320 ("the President [is] the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress."). This authority encompasses the authority to discuss any issue with another sovereign nation and to recommend to it such courses of action as the President believes are in our Nation's interest. We believe, therefore, that section 111 as amended impermissibly infringes on a fundamental responsibility that the Constitution has entrusted to the President.

We note, moreover, that section 111 as amended would erect criminal penalties for violating its sweeping provisions. The prohibitions are cast in vague and subjective terms. Given the President's constitutional authority in this area, such vagueness is inherent in any attempt to criminalize the exercise of his foreign policy powers. We believe section 111 is far too vague to pass constitutional muster as a criminal statute. *See Kolender* v. *Lawson*, 461 U.S 352 (1983). Even if upheld, the threat of criminal sanctions, based on vague and subjective standards, would greatly impair the conduct of military, foreign policy and intelligence activities by the United States, with concomitant damage to interests of the Nation. Moreover, amended section 111 poses profound constitutional problems, insofar as it purports to restrict "assistance" provided under statutory authority, because the "purpose" and "effect" tests it establishes are so vague and subjective as to interfere with the President's constitutional role in foreign affairs.

First, prosecutions under amended section 111 turning on improper "purpose" would necessarily entangle the courts in nonjusticiable political questions. *See Baker* v. *Carr*, *supra*, 369 U.S. at 217. To attempt to discern the President's state of mind, or the state or mind of subordinate executive branch officials, and to impose the threat of criminal penalties based on allegedly impermissible foreign policy objectives in carrying out otherwise authorized actions, infringes on the constitutional responsibilities and powers of the President. *Cf. Goldwater* v. *Carter*, 444 U.S. 996, 1003 (1979) (Rehnquist, J., concurring) (issue is "political" and nonjusticiable if it "involves the authority of the President in the conduct of our country's foreign relations and the extent to which the * * * Congress is authorized to negate the action of the President").

Second, presecutions turning on the improper "direct effect" of assistance would also unconstitutionally interfere with the President's control of foreign policy. The "direct effect" of assistance is often unpredictable and outside the control of the President. The section would make no meaningful distinction among collateral effects. Expecting executive branch officials to second-guess some future judgment as to the "direct effect" of assistance would impermissibly cabin the President's exercise of his constitutional authority in foreign affairs.

Indeed, in addition to these constitutional problems, amended section 111 would hamstring the Nation's foreign policy by criminalizing foreign policy disputes, rather than leaving resolution of such disputes to the political process. By making those who formulate and execute foreign policy serve the public under the threat of standardless criminal prosecutions, section 111 as amended would clearly have a negative impact on the effective, forceful and entirely lawful representation of the Nation's foreign policy interests.

We note that included in amended section 111 would be the provision that "[n]othing in this section shall be construed to limit the full Constitutional powers of the President of the United States to conduct the foreign policy of the United States." We believe this provision is clearly inadequate to preserve the President's authority in this area, or to resolve the many other problems posed by these sections. The provision merely states a truism: no statute can limit the substantive authority of the President under the Constitution. The opportunity to litigate the scope of the President's constitutional authority in a criminal prosecution, however, would be cold comfort to policymakers, and in no way removes the chilling effect that these provisions will have on the making of sound foreign policy.

Section 111 as amended would also provide "that no United States assistance shall be provided to any third party . . . if the provision of such funds or assistance would have the purpose or direct effect of furthering or carrying out the same or similar activities, with respect to that region, country, government, group, or individual, for which United States assistance is prohibited." Where Congress has prohibited aid to a particular country, we do not dispute that it can prevent circumvention of that prohibition by prohibiting the United States from providing money to a third country to be passed along to the prohibited country. We object, however, to the use of "purpose" or "direct effect" language for the reasons stated above.

Accordingly, for all of these reasons, we urge that Senator Moynihan's amendment not be adopted and that instead sections 111 and 112 be deleted.

The Office of Management and Budget has advised that there would be no objection to this report, and that enactment of sections 111 and 112 as reported by the Foreign Relations Committee, or the proposed (Moynihan) revised section 111 would not be in accord with the President's program.

Sincerely,

CAROL T. CRAWFORD,
Assistant Attorney General.

Mr. MOYNIHAN. Mr. President, I want to thank my friend and fellow committee member, the able and learned Senator from North Carolina, who has set forth in careful, modulated and moderate terms the opposition of the administration to this measure. Yet, I view this administration position as disappointing in its context as well as its text.

We are very clearly here to try to see that there be no repetition of the events of the past administration. They were painful, divisive, and dangerous. They raised a specter of a constitutional crisis. Only the extent to which the Secretary of State and his Chief of Staff and the President himself realized that potential, did we avoid it. We realized it after the event when, in fact, it existed; it was a constitutional crisis.

A distinguished observer at that time remarked in an article that if ever the constitutional form of Government of the United States would come to an end, we now have a better idea of how this might come about. It was of that level of consequence. And all because people acted in ways that the President surely would not have wished them to do. Yet, those people thought that in the end he would welcome the fruits of their actions, and no one was able to say: No, you cannot do that; Congress has said you cannot do that.

This is not just our right but our responsibility. I have here, Mr. President, a memorandum of law from the American Law Division of the Congressional Research Service. It states:

In summary, the exercise by the President of power delegated by Congress must comply with its terms. Accordingly, neither the President nor his agents are at liberty to disregard conditions imposed by Congress on the provision of United States assistance which only Congress can authorize and fund.

We are trying to protect the President and the process.

Mr. President, I have two memoranda of law from the American law division, one dated June 28, 1989, and the other dated July 10, 1989, attesting to the clear constitutionality of this amendment. I ask unanimous consent they be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, June 28, 1989.

To: Hon. DANIEL PATRICK MOYNIHAN. Attention: Paul Stockton.

From: American Law Division.

Subject: Response to objections directed at amendment proposing Section 111 to the "Foreign Relation Authorization Act, Fiscal 1990" (S. 1160).

Reference is made to your inquiry of June 23, 1989 requesting our comments on the Justice Department's views concerning your proposal to prohibit soliciting and diverting funds to carry out otherwise prohibited activities.

The proposed section in question, Section 111, clearly is intended to preclude a repetition of various activities disclosed during congressional and other investigations of the Iran-Contra Affair. Briefly, it is designed to prevent so-called "tin cup diplomacy", whereby U.S. officials seek to obtain funds from unconventional sources to carry out foreign policy objectives at odds with legal requirements, and manipulating foreign assistance to encourage third party support for activities that cannot be legally supported in a direct manner.

Specifically, proposed Section 111 amends the Foreign Assistance Act of 1961, as amended, to prohibit officers and employees of the United States Government from "solicit[ing] the provision of funds or material assistance by any foreign government" or its agents and foreign or United States persons for the purpose of furthering an activity or activities the assistance of which is prohibited by law. In addition, Section 111 prohibits United States assistance to a third party when that assistance has the purpose or direct effect of furthering an activity or activities which are prohibited by law.

As defined by Section 111 "United States assistance" means "any kind" of "assistance under the [FAA]", "sales, credits, and guaranties under the Arms Export Control Act," arms export license, and, generally speaking, intelligence activities except the provision or sharing of intelligence information."

In correspondence dated June 20, 1989, the Justice Departments asserts that Section 111 "raise[s] grave and fundamental constitutional problems and should be deleted." The Department's attack on Section 111 is two pronged: it interferes with "consultation" between the United States and another sovereign nation"; it denies due process because it visits criminal penalties on conduct which is imprecisely defined.

As is becoming customary in these circumstances, the Justice Department implies that the Executive Branch is the principal, if not the only, actor having constitutional responsibilities for foreign affairs and that this state of affairs is conclusively demonstrated by descriptions of the President as being "the sole organ of the federal government in the field of international relations", citing *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936).

Although the President has a significant role in the conduct of the foreign affairs of the United States, it is not his sole or exclusive province. Time does not permit and the occasion does not seem to warrant an extended elaboration of the facts that the Constitution divides foreign affairs between Congress and the President and that the "sole organ" designation relates to his capacity as spokesman or "mouthpiece" for the nation in this realm. Professor Edward S. Corwin, an acknowledged scholar of the Constitution and the American Presidency, made a pair of relevant observations unsurpassed for their accuracy and common sense.

Touching on the constitutional "grants of powers capable of affecting" international relations, he said:

". . . *Where does the Constitution vest authority to determine the course of the United States as a sovereign entity at international law with respect to matters in which other similar entities may choose to take an interest?* Many persons are inclined to answer offhand "in the President"; but they would be hard put to it, if challenged, to point out any definite statement to this effect in the Constitution itself. What the Constitution does, *and all that it does*, is to confer on the President certain powers capable of affecting our foreign relations, and certain other powers of the same general kind on the Senate, and still other such powers on Congress; but which of these organs shall have the decisive and final voice in determining the course of the American nation is left for events to resolve.

"All of which amounts to saying that the Constitution, considered only for its affirmative grants of powers capable of affecting the issue, is an invitation to struggle for the privilege of directing American foreign policy. In such a struggle the President has, it is true, certain great advantages, which are pointed out by Jay in *The Federalist:* the *unity* of the office, its capacity for *secrecy* and *dispatch*, and its superior sources of *information;* to which should be added the fact that it is always on hand and ready for action, whereas the houses of Congress are in adjournment much of the time. But despite all this, the actual *practice* under the Constitution has shown that, while the President is usually in a position to *propose*, the Senate and Congress are often in a technical position at least to *dispose*. The verdict of history, in short, is that the power to determine the substantive content of American foreign policy is a *divided* power, with the lion's share falling usually, though by no means always, to the President." *The President: Office and Powers 1787-1957* 171 (1957) (Italics in original)

As to John Marshall's characterization of the President as sole organ of foreign relations, Corwin describes the circumstances for and the significance of the remark as follows:

"Marshall's remark was made in his capacity as a member of the House of Representatives to uphold President John Adams in having ordered the extradition under the Jay Treaty of one Jonathan Robbins, alleged to be a fugitive from British justice. The President's critics contended that the situation was one that required judicial action, an argument that Marshall answered by pointing out that 'the case was in its nature a national demand made upon the nation.' The parties were two nations. 'They cannot come into court to litigate their claims, nor can a court decide them.' Then follow the words quoted above, which conclude with the statement, 'of consequence, the demand of a foreign nation can only be made on him.'

Clearly, what Marshall had foremost in mind was simply the President's role as *instrument of communication* with other governments. . . . That is to say, while the President alone may address foreign governments and be addressed by them, yet in fulfilling these functions he is, or at least may be, the mouthpiece of a power of decision that resides elsewhere." Id at 177-178. (Italics in original)

Before turning to the asserted "grave and fundamental constitutional problems" raised by Section 111, note should be taken of the fact that the Justice Department apparently assumes either that federal officers and employees are currently authorized to solicit nonappropriated funds to conduct foreign affairs on behalf of the United States or that such persons do not require statutory authority for these purposes. Neither assumption seems to be legally correct.

The Constitution by the necessary and proper power assigns the power to create offices to Congress. *Buckley v. Valeo*, 424 U.S. 1, 134 (1976). Congress not only creates the office but regulates all incidents related to the office including powers and duties, term, compensation, and manner of appointment. Virtually nothing relating to an office is beyond the congressional regulatory power except for actual appointment and removal of the office holder (impeachment excepted).

Fundamental to the rule of law is the idea that actions by United States officials have to be statutorily authorized. Stated differently, the absence of restrictive or prohibitory language is not the equivalent of a grant of authority and cannot be substituted for it or to justify *ultra vires* activities.

It is Hornbook law that—

"Administrative agencies are creatures of statute and their power is dependent upon statute, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication.

"Official powers cannot be merely assumed by administrative officers, nor can they be created by the courts in the proper exercise of their functions. Non-existent powers cannot be prescribed by an unchallenged exercise." 1 Am Jur 2d Administrative Law sec. 70.

Although the President has a source of power in addition to statutory grants of authority, namely Article II of the Constitution, he is similarly dependent a grant from some lawful source in order to operate. "The President's power, if any, to issue the order [to seize and operate the Nation's strike-bound steel mills] must stem either from an act of Congress or from the Constitution itself." *Youngstown Co. v. Sawyer*, 343 U.S. 579, 587 (1952). The Court's opinion in the landmark cited case went on to make two observations that are not without some relevance in the matter under consideration. First,

". . . In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that 'All legislative Powers herein granted shall be vested in a Congress of the United States. . . .' After granting many powers to the Congress, Article I goes on to provide that Congress may 'make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.' "

Second,

". . . The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control." id. at 588.

Accordingly, it seems to follow that the securing by federal officials of funds from any source whatsoever whether by solicitation, sale, or what have you has to be expressly authorized by law. See, e.g., U.S. Const., Art. IV, sec. 3, cl.2, which provides in pertinent part that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the . . . Property belonging to the United States." See, also, 31 U.S.C. 3133, which authorizes the Secretary of the Treasury to accept gifts from the people of the United States to reduce the public debt, and 31 U.S.C. 9701, which specifies when and how agencies may charge for government services and things of value.

Time does not allow for a search of current authorities of all federal departments and agencies to solicit funds for the conduct of affairs, foreign or domestic. Although various provisions of law bear on the authority of the Department of State and its officers and employees in the matter of receiving and handling funds from foreign and other nonappropriated sources, none appear to authorize solicitation of funds in the manner and for the purpose that would be covered by Section 111. See, e.g., 22 U.S.C. 1754, 2103, 2220d, 2362, 2516, 2621, 2625, 2668, 2697. On the other hand, see the "Pell Amendment", section 722(d) of the Foreign Assistance Act of 1961, as amended, P.L. 99-83, which generally speaking prohibits using assistance under that Act and the AECA to obtain Contra aid from foreign sources. It would be surprising to find that the Department had any authority along these lines or even the President for that matter because of the adverse implications that authority would seem to have for accountability and separation of powers.

The Justice Department denounces Section 711 as an unconstitutional interference with the Presidents power to engage in consultations with other sovereigns, presumably a synonym for the conduct of negotiations. The charge if true would present in the Department's words a "grave and fundamental constitutional problem[]" since the power to negotiate has been described by the Supreme Court as a plenary and exclusive power of the President. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) (". . . he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it.") See, also, *Ex parte Garland*, 4 Wall. (80 U.S.) 333 (1867), for an instance in which a law was held unconstitutional because it had the effect of limiting a presidential pardon, one of the few other plenary and exclusive powers of the President.

The flaw in the Department's argument seems to consist of confusing negotiation with solicitation. Conceding that the latter may arise in the context of the former, they are fundamentally distinct activities. To appreciate the difference it seems necessary only to substitute for solicitation of funds for purposes of carrying on activities the direct assistance of which is prohibited by law the solicitation of a specified illicit object such as a bribe. The occurrence of the latter during the conduct of negotiations would not immunize it from prosecution. This conclusion has particular application when, as seems to be the case here, negotiations are connected with the exercise of a power delegated by Congress. Section 711 impacts on programs and activities which are authorized and funded by congressional enactments. Although it might be argued that the President has some leeway as Commander in Chief and sole organ of foreign relations to conduct intelligence operations in order to safeguard national security, it is generally conceded that the President has no authority independent of a statute to furnish foreign assistance or to sell defense articles and services. See, e.g., testimony by former Deputy Secretary of State Kenneth W. Dam, *The Supreme Court Decision Concerning The Legislature Veto*, Hearings Before the Committee on Foreign Affairs, 98th Cong., 1st Sess. 100 (1983).

As previously indicated, the President executes the laws enacted by Congress with his concurrence or over his disapproval and he is not at liberty to disregard constitutional and statutory restrictions by or during the course of negotiating with a foreign sovereign. *Reid v. Covert*, 354 U.S. 1 (1957); *Consumers Union of U.S., Inc. v. Kissinger*, 506 F. 2d 136 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 1004 (1975). For example, presidential claims of independent constitutional authority to negotiate tariff changes have been rejected Compare *United States v. Guy W. Capps, Inc.*, 204 F. 2d 655, 659 (4th Cir. 1953), *affd on other grounds*, 348 U.S. 296 (1955). The exercise by the President of power delegated by Congress must comply with its terms. "[T]he executive cannot, through its communications, manage foreign commerce in a manner lying outside a comprehensive, regularly scheme Congress has enacted pursuant to its Article I, [section] 8 power." *Consumers Union of U.S., Inc. v. Kissinger*, 506 F. 2d at 149.

In summary, the exercise by the President of power delegated by Congress must comply with its terms. Accordingly, neither the President nor his agents are at liberty to disregard conditions imposed by Congress on the provision of United States assistance which only Congress can authorize and fund. We are not aware of any authority for the proposition that because an otherwise lawful condition has incidental consequences on presidential negotiating options it is thereby rendered unlawful. The numerous conditions contained in the principal laws in question, namely the FAA and the AECA, and countless others that could be mentioned are evidence in support of that conclusion.

As is apparent in the following comment by Justice Jackson, concurring, *Youngstown Co. v. Sawyer*, 343 U.S. at 644, incidential effects on presidential activities that flow from the congressional exercise of Article I, section 8 powers are permissible. "While Congress cannot deprive the President of the command of the army and navy, only Congress can provide him an army and navy to command. It is also empowered to make rules for the 'Government and Regulation of land and naval Forces,' by which it may to some unknown extent impinge upon even command functions."

As previously indicated, the Justice Department concludes its objections to Section 111 by suggesting that it violates due process in that it is unduly vague and subjective. For the most part, the Department's comments in this regard consist of generalities and conclusory statements. (E.g., "sweeping provisions", "cast in vague and subjective terms", "too vague to pass constitutional muster as a criminal statute".)

Vagueness or the failure to cast a criminal provision in precise terms like its twin overbreadth or the commingling of licit and illicit activities raises matters that can be debated endlessly, particularly when the debate is cast in terms of ultimate conclusions rather than reasons. Reasonable persons may read the same provision and come to different conclusions regarding the specificity or lack of specificity of its language. The Justice Department charges vagueness but does not illustrate the point with precise examples of the section's language shortcomings.

Section 111 is designed to forestall the solicitation of funds from specified sources by federal officers and employees for the purpose of supporting activities the direct support of which by federal appropriations is prohibited. It also prohibits assistance to any third party when that assistance has the purpose or direct effect of furthering or carrying out the same activities or similar activities. The activities in any and all events are activities which by law cannot be assisted. The section's language standing alone, but particularly against the background from which it springs, namely activities that came to light during the Iran-Contra investigations, seems to be clear regarding the conduct expected of federal officials. The incorporation by one statutory provision of an offense denounced by another statutory provision is not an unknown technique. See, e.g., 18 U.S.C. 371, regarding conspiracy to "commit any offense against the United States."

RAYMOND J. CELADA,
Senior Specialist in American Public Law.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, July 10, 1989.

To: Senate Committee on Foreign Relations. Attention: David Keaney.
From: American Law Division.
Subject: Constitutional Objections to Provisions of S. 1160, the Department of State Authorization Bill.

This memorandum responds to your inquiry respecting the June 20, 1989, letter from the Office of Legislative Affairs, Department of Justice, objecting on constitutional and policy grounds to several provisions of S. 1160, 101st Congress, the 1990 authorization bill for the Department of State, USIA, and other agencies. Because the letter sets out a standard of review that shapes the entire analysis of the bill, and because that standard is quite controversial, the major part of this memorandum addresses in some detail that matter before dealing briefly with the precise objections.

Under § 111 of the bill, officers and employees of the United States would be forbidden to solicit from foreign governments or persons funds or material assistance to further any activity for which United States law expressly prohibits or restricts the use of United States funds to pursue. Under § 112, officers and employees of the United States are similarly restricted from providing assistance to any third party which would have the purpose or direct effect of facilitating an activity prohibited or restricted by United States law. Other sections are directed to different subjects: termination under certain circumstances and subject to waiver of an agreement with the Soviet Union, § 133, requirements of certain actions by the AID Administrator with some countries respecting debt exchanges and areas of severely degraded national resources, §§ 611, 463(b)(2), 466(b), promotion of negotiations and actions respecting global warming, § 622, reports on contacts with PLO representatives, § 804, and establishment of an Advisory Commission on Public Diplomacy to make reports to both President and Congress, § 210.

Central to the DOJ analysis is the supposition of exclusive presidential control of United States foreign relations. Two quotations will suffice. "The President has the responsibility, under the Constitution, to determine the form and manner in which the United States will maintain relations with foreign nations." DOJ Letter, p. 1. "[I]t has long been recognized that the President, both personally and through his subordinates in the executive branch, *determines* and articulates the Nation's foreign policy. . . . This authority encompasses the authority to discuss any issue with another sovereign nation and to recommend to it such courses of action as the President believes are in our Nation's interest." Id., p. 2 (emphasis supplied). Combined with the Department's constitutional faultfinding in context with the provisions described above, it is evident that exclusivity and inability of legislative guidance and direction are the standards of the position.

The DOJ letter does not mention, even in passing, what the Constitution actually says about the respective powers of Congress and the President to act in foreign affairs, beyond an unexplicated citation to §§ 1, 2, and 3 of Article II. It may, therefore, not be too pedantic merely to list the various delegations that the Constitution contains, with relevance to foreign affairs. Thus, Congress, in which is vested "[a]ll legislative powers," Article I, § 1, is authorized to tax and to spend "to . . . provide for the common Defense," id., § 8, cl. 1 "[t]o regulate Commerce with foreign Nations," id., cl. 3, "[t]o establish an uniform Rule of Naturalization," id., cl. 4, "[t]o . . . regulate the Value . . . of foreign Coin," id., cl. 5, "[t]o define and punish Piracies and Felonies on the high Seas, and Offenses against the Law of Nations," id., cl. 10, "[t]o declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water," id., cl. 11, "[t]o raise and support Armies," id., cl. 12, "[t]o provide and maintain a Navy," id., cl. 13, and "[t]o make Rules for the Government and Regulation of the land and naval Forces," id., cl. 14. Moreover, Congress is delegated the power "[t]o make all laws which shall be necessary and proper for carrying into Execution the[se] foregoing Powers" as well as also "all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Id., cl. 18. Further, the Constitution is quite explicit that "[n]o Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law." Id., § 9, cl. 7.

Delegations to the President are briefer and contain both powers and duties. He is invested with the "executive Power," Article II, § 1, cl. 1, and is made "Commander in Chief of the Army and Navy of the United States," id., § 2, cl. 1, empowered, "by and with the Advice and Consent of the Senate, to make Treaties," and to "nominate, and by and with the Advice and Consent of the Senate, . . . appoint Ambassadors, other public Ministers and Consuls, . . . and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law," id., cl. 2, authorized "from time to time [to] give to the Congress Information on the State of the Union, and [to] recommend to their Consideration such Measures as he shall judge necessary and expedient," to "receive Ambassadors and other public Ministers," and to "take Care that the Laws be faithfully executed." Id., § 3.

It is evident, therefore, that Congress and President share under the Constitution in the promulgation of policies respecting our foreign affairs. That there are some powers the President alone has is generally conceded. What they are and where the line lies between presidential and congressional concurrent powers are bedeviling questions. Answers to these questions have seldom come from the courts, inasmuch as many, but certainly not all, of the issues arising in the foreign affairs contexts are not justiciable. Answers more generally have arisen from practice and as with most such resolutions they have not been permanent but shifting, depending on the balances existing at the time between Congress and President.[1]

Turning, then, to the DOJ letter, it is evident that the basis for the positions taken is largely the view of presidential power derived from *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), certain sources relied on in that case, and subsequent judicial citations of it. A review of these precedents will, we think, afford a more firmly-based standard under which to analyze the bill.

Curtiss-Wright has a long and respectable pedigree. Its view of the powers of the two branches was reheared in the debate between Hamilton and Madison over President Washington's neutrality proclamation during the war between Great Britain and France, the "Pacifus"—"Helvidius" essays.[2] Justice Sutherland in *Curtiss-Wright* combined the Hamiltonian emphasis that control of foreign relations is exclusively an executive function with a position developed by himself in extrajudicial writings, that the power of the National Government is not one of enumerated but of inherent powers, to mark out presidential power. The case itself involved not a challenge to the power of the President to act alone but rather to his authority to act pursuant to a statutory delegation from Congress. Concerned with the outside arming of the belligerents in war between Paraquay and Bolivia, Congress authorized the President to proclaim an arms embargo if he found that such action might contribute to a peaceful resolution of the dispute. President Roosevelt issued a finding and proclamation, and Curtiss-Wright and associate companies were indicted criminally for violating the embargo. Their defense was that Congress had failed adequately to elaborate standards to guide the President's exercise of the power thus delegated, a constitutional problem under *Panama Refining Co.* v. *Ryan*, 293 U.S. 388 (1935), and *Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935).

Without an overly-long presentation of the theory set out in *Curtiss-Wright*, it should suffice to say that the Court denied that the limitations on delegation in the domestic field were at all relevant in foreign affairs. Justice Sutherland wrote that of the two broad classes of power possessed by the National Government, only domestic powers were carved out by the Constitution from the general mass of legislative powers possessed by the States and conferred on the Federal Government. Powers over foreign relations, international powers, were never possessed by the States severally and thus could not have been delegated to the National Government. When the colonies rebelled and severed relations with Great Britain, the powers over foreign relations lodged in that Nation did not descend to the colonies severally but to the colonies in their collective and corporate capacity as the United States of America.

"It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution. The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties if they had never been mentioned in the Constitution, would have been vested in the federal government as necessary concomitants of nationality . . . . Not only . . . . is the federal power over external affairs in origin and essential character different from that over internal affairs, but participation in the exercise of power is significantly limited. In this vast external realm with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation . . . ." Id., 318, 319

It was in connection with this last point that the Court, as does the DOJ letter, cited John Marshall, a Member of Congress from Virginia, as stating in 1800, that "[t]he President is the sole organ of the nation in

[1] See, e.g. E. CORWIN, THE PRESIDENT—OFFICE and POWERS, 1797-1984 (5th rev. ed. 1984). 214-223.

[2] The essays are summarized and quoted in the THE CONSTITUTION of the UNITED STATES of AMERICA—ANALYSIS and INTERPRETATION, S. Doc. 99-16 (1987), 446-447 (hereinafter CONSTITUTION ANNOTATED). See also CORWIN, op. cit., n. 1, 208-211.

its external relations, and its sole representative with foreign nations." Id., 319 (quoting 10 ANNALS of CONGRESS 613). Continued the Court: "It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, *plenary and exclusive* power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution." Id., 319-320 (emphasis supplied).

Scholarly criticism of Justice Sutherland's reasoning has demonstrated that his essential postulate, the passing of sovereignty in external affairs directly from the British Crown to the colonies as a collective unit, is in error.[3] This is not to say, of course, that the opinion does not remain strong precedent for the point of view for which the DOJ letter cites it.[4] In subsequent opinions, both dicta and holdings controvert its principal conclusions, e.g., *Ex parte Quirin*, 317 U.S. 1, 25 (1942); *Reid v. Covert*, 354 U.S. 1, 5-6 (1957)(plurality opinion); *Kent v. Dulles*, 357 U.S. 116, 129 (1958), and the Steel Seizure Case, although involving domestic industry the presidential action arose during and because of the Korean War, established a paradigmatic mode of analysis of claims of presidential powers at odds with *Curtis-Wright. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). More recently, the Court, in the context of statutory interpretation rather than challenges to statutory controls on the President, has adverted to and utilized *Curtis-Wright* in ways that enlarged presidential discretion. See *Haig v. Agee*, 453 U.S. 280, 291, 293-294 & n. 24, 307-308 (1981); but see *Dames & Moore v. Regan*, 453 U.S. 654, 659-662, 678 (1981)(utilizing both *Curtiss-Wright* and *Youngstown*, with result through statutory construction again enlarging presidential discretion). Compare *Webster v. Doe*, 108 S.Ct. 2047 (1988)(construing National Security Act as not precluding judicial review of constitutional challenge to CIA Director's dismissal of employee, over dissents relying in part on *Curtiss-Wright* as interpretive forces counseling denial of judicial review).

In addition, without discussing the cases, it may be noted that the recent separation-of-powers controversies have involved two lines of analysis, one involving an emphasis upon the exclusivity of presidential powers and rigid divisions among the branches, e.g., *INS v. Chadha*, 462 U.S. 919 (1983); *Bowsher v. Synar*, 478 U.S. 714 (1986), and the other, apparently now ascendant, emphasizing blending and balancing to protect only core powers. E.g., *Morrison v. Olson*, 108 S.Ct. 2597 (1988); *Mistretta v. United States*, 109 S.Ct. 647 (1989). But see *Granfinanciera, S.A. v. Nordberg*, 87-1716 (June 23, 1989) (apparently recurring in Seventh Amendment jury-trial analysis to exclusivity/formalistic approach of *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (plurality opinion)). These cases are relevant, but their treatment would carry us too far astray from the principal issue.

We may assume, therefore, that the *Curtiss-Wright* analysis is viable and is one precedent with which to evaluate the provisions of S. 1160. But it is hardly the only precedent, and its meaning when it is used to challenge the validity of an act of Congress is not as evident as might be first thought. It was, as we noted, a case involving the validity of a law, not one involving an action of the President in the absence of a statute or even in contravention of a statute. Although many have argued that the language of *Curtiss-Wright* most often cited by proponents of presidential exclusivity in foreign relations is dicta, it does not appear to be that, but to have been necessary to Justice Sutherland's analysis in choosing to disregard the then-current limitations on the delegation doctrine. Whatever the status of the language, it is important to note that three is practice and case law contrary to the principles set out in *Curtiss-Wright*, and it is to that we turn now.

We must first consider the language quoted from Representative John Marshall, the President as "sole organ of the nation in its external relations." Contrary to what one might think from its citation in *Curtiss-Wright* and in the DOJ letter, Marshall's statement in context is supportive of *congressional* power. In 1799, President Adams, in order to execute the extradition provisions of the Jay Treaty, issued a warrant for the arrest of one Robbins, and the action was challenged in Congress on the ground that no statutory authority existed by which the President could act. It was in defense of the President's conduct that Marshall uttered his now-famous line. But Marshall was making a point about the President as sole representative of the Nation abroad, not asserting the exclusivity of his powers, as is evident from his continued remarks.

"Of consequence, the demand of a foreign nation can only be made on him.

"He possesses the whole Executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.

"He is charged to execute the laws. A treaty is declared to be law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.

"The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been described? *Congress, unquestionably, may prescribe the mode, and Congress may devolve on others the whole execution of the contract;* but, till this be done, it seems the duty of the Executive department to execute the contract by any means it possesses." 10 ANNALS OF CONGRESS 613-614 (1800) (italics supplied).

Thus, Marshall was endorsing not the power of the President to make and carry out foreign policy all alone. The President is the Nation's representative in dealing with foreign nations.[5] But the treaty, as a self-executing treaty, was the law of the land, under the supremacy clause, and determined what the President was to say and do as the Nation's representative in this particular context. True it was that the President and the Senate had made the treaty, but Marshall declared that Congress could enact a statute which would prescribe how the President was to carry out his representations to the foreign nation. In fact, in 1848, Congress did enact such a statute, and in *Fong Yue Ting v. United States*, 149 U.S. 698, 714 (1893), the Court expressly endorsed Marshall's view, including the power of Congress.

Representative Marshall soon became Chief Justice Marshall, and in *Little v. Barreme*, 2 Cr. (6 U.S.) 170 (1804), he had another occasion to recognize congressional power in the foreign affairs area and to deny the exclusivity of presidential power. There, in the midst of an undeclared war between the United States and France, a United States vessel under orders from the President had seized a United States merchant ship bound *from* a French port, allegedly carrying contraband material. Congress had, however, enacted a law which provided only for seizure of such vessels bound *to* French ports. 1 Stat. 613 (1799). Upholding an award of damages to the ship's owners for wrongful seizure, the Chief Justice said:

"It is by no means clear that the president of the United States whose high duty it is to 'take care that the laws be faithfully executed,' and who is commander in chief of the armies and navies of the United States, might not, without any special authority for that purpose in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited by being engaged in this illicit commerce. But when it is observed that [an act of Congress] gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound or sailing to a French port, the legislature seems to have prescribed that the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French port." Id., 2 Cr., 177-178.

Thus, the Court held, the President's instructions exceeded the authority granted by Congress. Whatever might have been the result in the absence of legislation, in the

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[3] Patterson, *In re United States v. Curtiss-Wright Corp.*, 22 TEX. L. REV. 286, 445 (1944); Levitan, *The Foreign Relations Power: An Analysis of Mr. Justice Sutherland's Theory*, 55 YALE L. J. 467 (1946); Berger, *The Presidential Monopoly of Foreign Relations*, 71 MICH. L. REV. 1, 26-33 (1972); Lofgren, *United States v. Curtiss-Wright Export Corporation: An Historical Reassessment*, 83 YALE L. J. 1 (1973), reprinted in C. LOFGRENN, "GOVERNMENT FROM REFLECTION and CHOICE"—CONSTITUTIONAL ESSAYS on WAR, FOREIGN RELATIONS, and FEDERALISM (1986), 167.

[4] That the opinion "remains authoritative doctrine" is stated in L. HENKIN, FOREIGN AFFAIRS and the CONSTITUTION (1972), 25-26. It is utilized as an interpretive precedent in AMERICAN LAW INSTITUTE, RESTATEMENT (THIRD) of the LAW, THE FOREIGN RELATIONS LAW of the UNITED STATES (1987), see, e.g., §§ 1, 204, 339. It will be noted, however, that the Restatement is circumspect about the reach of the opinion in controversies between presidential and congressional powers.

[5] The meaning, therefore, of Marshall's phrase was caught in a more accurate but less metaphorically potent expression in the words of the Senate Foreign Relations Committee in an 1897 report. "The executive branch is the sole mouthpiece of the nation in communication with foreign sovereignties." CORWIN, op cit., n. 1, 219. Or there are the words of the Foreign Relations Committee in 1816, in a passage quoted in *Curtiss-Wright*, supra, 299 U.S., 319: "The President is the constitutional representative of the United States with regard to foreign nations." One can then discuss in what respects the President may act in effectuation of his exclusive powers and in what respects Congress may lay down rules, but the President's role as sole representative does not take us very far.

presence of legislation the President must adhere to it. This result, in the context of not only foreign relations but the President's military powers as well, speaks clearly to shared presidential-congressional powers in foreign relations. Additionally, the distinction Marshall drew is reflected in the most plausible view of the doctrine enunciated by the Court in the Steel Seizure Case.

It will be recalled that during the Korean War, President Truman issued an executive order directing the Secretary of Commerce to seize and operate most of the steel industry of the country, in order to avert a nationwide strike which he believed would jeopardize the national defense. In *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Court, six-to-three, invalidated the seizure. The opinion of the Court, by Justice Black, based the result upon the absence of congressional authorization. Id., 585-589. But a majority of Justices did not accept his view, the dissenters, of course, but at least four of the Justices agreeing with the result of the case. Their concurrence was based on the fact that Congress debated the issue previously and had refused to authorize seizure, had withheld the power the President now asserted. Id., 597, 602 (Justice Frankfurter), 635-640 (Justice Jackson), 657 (Justice Burton), 662-663 (Justice Clark). Justice Jackson attempted a schematic representation of presidential powers which "are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress." Id. 635. This influential formulation is tripartite.

"1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. . . .

"2. When the President acts in absense of either a congressional grant of denial of authority, he can rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. . . .

"3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system." Id., 635-638.

To be sure, this schema is the formulation of one Justice, but as then-Justice Rehnquist, himself Justice Jackson's law clerk the term *Youngstown* was decided, wrote for the Court in *Dames & Moore v. Regan*, 453 U.S. 654, 661-662, 668-669 (1981), "both parties agree[d]" that the concurring opinion "brings together as much combination of analysis and common sense as there is in this area," and further, quoting the passages at length, "we have in the past found and do today find Justice Jackson's classification of executive actions into three general categories analytically useful[.]"

Thus, the analysis to follow in assessing the validity of the contested provisions of S. 1160 is not alone the language of *Curtiss-Wright* but the application of many precedents and an assessment of the powers conferred on the two branches by the Constitution.

In passing, because the DOJ letter does advert to the political question doctrine, it does not appear that any of the controversies that would be raised by passage into law of these challenged provisions could not be heard by the courts. Although there is language in cases asserting that all questions touching on foreign affairs and foreign policy are political, e.g., *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302 (1918), the Court is plain that it is "error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance," *Baker v. Carr*, 369 U.S. 186, 211 (1969). As the Court has quite recently explained, "[t]he political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch. . . . [H]owever, the courts have the authority to construe treaties and executive agreements, and it goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts. . . . We are cognizant of the interplay between these [congressional] Amendments and the conduct of this Nation's foreign relations, and we recognize the premier role which both Congress and the Executive play in this field. But under the Constitution, one of the Judiciary's characteristic roles is to interpret statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones." *Japan Whaling Assn. v. American Cetacean Society*, 478 U.S. 221, 230 (1986). Cf. *United States v. Stuart*, 109 S.Ct. 1183 (1989); *Chan v. Korean Air Lines*, 109 S.Ct. 1676 (1989).

With respect to §§ 111 and 112, it is insisted by the DOJ letter that to bar solicitation of funds from a foreign country or a foreign person to further any activity for which United States funds are prohibited or restricted or to bar assistance to another country conditioned on that country furthering an activity for which United States funds are prohibited or limited would be to impair the President's ability to communicate anything he desires to another country. No doubt, the limitations have that effect, but whether it is permissible to limit the President is the question.

The numbers of provisions of law which have restricted or which do now restrict what the President may communicate with a foreign nation are numerous. For example, there is 22 U.S.C. § 262, which has been on the books since 1913. "The Executive shall not extend or accept any invitation to participate in any international congress, conference, or like event, without first having specific authority of law to do so." The President has often been delegated authority, usually restricted in some measure, to negotiate reciprocal tariff and other trade barrier reductions with foreign countries, and these laws limit what he may communicate to these foreign nations.[6] The provision of foreign assistance has been conditioned on numerous factors, such as the protection of human rights, eradication of the narcotics trade, protection of the property of United States nationals, and the like, which either limits or structures what the President can communicate to a foreign power.[7] And beginning in 1794, 1 Stat. 372, Congress authorized, with varying limits and qualifications, the President to put into place embargoes, and the same year passed the first of many neutrality acts. 1 Stat. 381.

If Congress can validly limit the use of United States funds for certain purposes,[8] can it not prevent the evasion of that limit through the means interdicted in §§ 111 and 112? The necessary and proper clause empowers Congress to carry out its legislative powers by selecting any means reasonably adapted to effectuate those powers. It also empowers Congress to legislate to exercise the same powers with respect to the authority granted other agencies and officers. Proper in the context of the clause means within the letter and spirit of the Constitution, and necessary refers to the utility and convenience to Congress of a particular approach. *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 413-415, 420 (1819). If, as the *Little v. Barrme* Court held, Congress could deny the President authority to seize ships bound from a French port and limit him to seizures of ships bound to such a port, is there any reason to think Congress could not prevent evasion of its statutory mandate through such limitations as are contained in the bill? Especially with respect to § 112, when what is involved is either federal funds, which cannot be drawn from the Treasury but pursuant to appropriations by law, Article I, § 9, cl. 7, or federal property, as to which Congress has the power to dispose of and make regulations with respect to, Article IV, § 3, cl. 2, and which the extensive regulation of the President's authority to make arms sales evidences Congress' power, denying the executive branch authority to confer remuneration on a foreign power in exchange for that power's performance of some act denied the United States Government hardly seems to invade what Justice Jackson's scheme tells us is the hardest reserve of presidential power to defend.

In § 133 of the bill, the President is directed to terminate the agreement between the United States and the Soviet Union with respect to the use of land in the respective capitals of the two Nations for diplomatic facilities, unless he certifies that the threat to national security of the Soviet use of the Mount Alto site is not significantly greater than their use of present facilities. The President may under certain circumstances waive the requirement. The DOJ letter states: "Even if Congress may terminate the domestic effect of a treaty by subsequent legislation, we believe only the President has the authority actually to terminate a treaty or executive agreement with another country." P. 4. The letter cites the RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, supra, n. 4, § 339, for the proposition. The RESTATEMENT sets forth the standard and accepted interpretation of the allocation of power. But, of course, the section does not purport to alter that interpretation. The President would terminate the agreement, not someone else. The real issue is whether Congress may direct him to carry out this function.

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[6] See, e.g., Koh, *Congressional Controls on Presidential Trade Policymaking after I.N.S. v. Chadha*, 18 N. Y. U. J. Intl. L. & Pol. 1191 (1986).

[7] See, e.g., Meyer, *Congressional Control of Foreign assistance*, 13 Y. J. Intl. L. 69 (1988).

[8] It is, of course, evident, that Congress can violate the Constitution through some conditioning of or limits on federal spending. E.g., *United States v. Lovett*, 328 U.S. 303 (1946); *United States v. Will*, 449 U.S. 200 (1980). But we are not at this point concerned with the validity of the underlying limit.

The DOJ letter, it will be noticed, acknowledges, backhandedly to be sure ("Even of Congress . . ."), the settled rule that Congress by a later enacted statute may supersede a treaty and other agreements and that a later treaty and at least some other agreements may supersede a statute.[9] And as the RESTATEMENT states: "If Congress enacts legislation that makes it impossible for the United States to carry out its obligations under an international agreement, . . . the President normally should take steps to terminate the agreement." Id., Comment. In fact, the first case of outright abrogation of a treaty by the United States occurred in 1798, when Congress by law pronounced the United States freed and exonerated from the stipulations of the Treaties of 1778 with France. 1 Stat. 578. This action was followed two days later by one authorizing limited hostilities against France, 1 Stat. 578-580, and in *Bas v. Tingy*, 4 Dall. (4 U.S.) 37 (1800), the Supreme Court treated the act of abrogation as simply one of a bundle of acts declaring "public war" upon the French Republic.

If it is the case that Congress can trigger the obligation to notify by enacting legislation inconsistent with the treaty's obligation (and why does the DOJ letter limit the issue to "domestic effect," inasmuch as legislation in the international area could create a conflict, as in e.g., the case of the War Powers Resolution), is the only problem here that the section directs the President to terminate?

Professor Corwin notes that Presidents have not followed a consistent line. "For example, section 34 of the Jones Merchant Marine Act of 1920 'authorized and directed' the President within ninety days to give notice to the other parties to certain treaties, which the act infracted, of the termination thereof. President Wilson refused to comply, asserting that he 'did not deem the direction contained in section 34 . . . an exercise of any constitutional power possessed by Congress.' . . . Yet had Congress contended itself with enacting the material portions of the statute it would unquestionable have become the President's constitutional duty to enforce these, regardless of their operation of existing treaties, and at least it would have been only common sense and common courtesy on his part, as the national organ of foreign relations, to have given the other parties to the treaties advance notice. In fact, Mr. Wilson did so proceed in 1915 in connection with the La Follette Act—despite the fact that act 'requested and directed' him to do so." [10]

It thus appears that other Presidents have complied with similar directions. The critical difference, in the point of view of the President, may be that Congress this time would not be enacting legislation in conflict with the treaty. Because Congress does have plenary power over the District of Columbia, Article I, § 8, cl. 17, it could flatly legislate to deny the Soviet Government the Mount Alto site. Instead, the section leaves the President, in choosing to act or not, two ways not to deny the site. Whether the flexibility be only an instrument of policy or whether it has some effect on the constitutional question may be a nice issue.[11]

Respecting §§ 611 and 622, which the DOJ letter objects to because they appear to require some negotiations with certain foreign powers and to require that some issues be included in negotiations, earlier comments in this memorandum with regard to past statutory provisions affecting presidential discretion are relevant. Additionally, these provisions of S. 1160 appear to be relatively minor compared to other provisions to which recent Administrations have acceded. E.g., § 722 of the International Security and Development Cooperation Act of 1985, P.L. 99-83, 99 Stat. 190, 249-259.

Under § 804, there are several reporting requirements imposed on the Secretary of State with respect to diplomatic contacts with the PLO. In light of the much more restrictive enactments regarding the PLO that Congress has passed, e.g., § 529 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989, P.L. 100-461, 102 Stat. 2268-27 (prohibition of negotiations); Title X of Foreign Relations Authorization Act of 1988 and 1989, P.L. 100-204, 101 Stat. 1331, 1406-1407 (PLO a terrorist organization, including ban on maintenance of offices in United States), and see *Palestine Information Office v. Shultz*, 674 F.Supp. 910 (D.D.C. 1987) (sustaining Secretary of State's closure of PLO office in Washington), it is difficult to see how reporting requirments, which serve the information gathering function of Congress, could raise significant constitutional issues. That Congress' power of acquiring information is broad and that the President may resist formal inquiries and reporting requirements only through the assertion of constitutional privileges are evident principles. E.g., *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977). The DOJ letter asserts that "ongoing disclosure of sensitive negotiations" may be impermissibly required. Id., p. 5. That perhaps might be the case in some circumstances, but it appears clear that it would not invariably be true, so that what legal precedents there are hardly suggests a facial flaw with this provision. Rather, the better course would seem to be a claim of privilege selectively applied by the President as the occasion arises.

The DOJ letter objects to § 210, providing for an advisory commission to study USIA administration of its programs and to report to both Congress and the President, for a melange of policy and constitutional reasons. Of those that concern us here, the constitutional objections, the letter appears to suggest that a separation of powers issue is key, an intermixture of executive and legislative functions. It is difficult to see, in general, where the problem lies. The commission is to *study* and to *report*. It is directed to formulate and recommend to the Director (of USIA), to the Secretary of State, and to the President policies and programs to carry out the functions of the USIA, but there is nothing in the provision that obligates any of these persons even to read the recommendations, much less to do anything about implementing them. In the reports to be made, the Commission is directed to include information on the recommendations it has made to the Director and the action taken to carry out the recommendations. Commission communications to the President and to the Secretary of State are not similarly to be reported. That the informing and reporting functions are confided to one branch to the exclusion of the others is a proposition that cannot be maintained. *Buckley* v. *Valeo*, 424 U.S. 1, 137-138 (1976). The DOJ letter suggests that "the separation of powers requires that each branch maintain its separate identity." As a structural matter, how the commission obscures the identity of either branch it reports to is unexplained.

Concern with respect to the Commission's mission to assess and to report about the internal operations of the executive branch are more focussed. But the extent to which the requirements actually have any substantial impact is not discussed. The letter complains that the report to Congress about the recommendations to the Director and his actions in response would inform Congress "about deliberations within the executive branch." All that the section requires to be reported are what recommendations the Commission makes to the Director and what he did or did not do to implement them. Nothing is said about deliberations. No internal discussions need be reported. Two public actions—what the Commission recommended, what the Director did—are to be reported to Congress. As the letter concedes, "much of the information," in what respect some of the information sought might not be obtainable it does not say, could be gotten from USIA itself. Why the fact that it comes from the commission changes its character is not clear. That the commission may be required to "assess" the effectiveness of various programs and to report to Congress on its evaluations hardly distinguishes it from, for example, the General Accounting Office.

Further, the letter states that the President, "as head of the unitary executive branch," has the power to see to it that the executive branch speaks with one voice to Congress. Of course, the President has "the general administrative control of those executing the laws." Myers v. United States, 272 U.S. 52, 163-164 (1926). And, of course, superiors may well have authority to limit the power of a subordinate to communicate with Congress. E.g., Congress Constr. Corp. v. United States, 314 F.2d 527, 530-532 (Ct.Cl. 1963) (finding authority in the statutory structure of the Navy and Defense Department). It is equally clear that Congress has the power to impose on officers and employees subordinate to the President a stat-

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[9] See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, supra, n. 4, § 115; CONSTITUTION ANNOTATED, supra, n. 2, 496-509.

[10] E. CORWIN, op. cit., n. 1, 220-221. The first instance of presidential termination by notice pursuant to congressional action appears to have occurred in 1846, when by joint resolution Congress authorized by the President at his discretion to notify Great Britain of the abrogation of a convention on the joint occupation of the Oregon Territory. The President complied, but he had in fact initially requested the resolution, creating an interpretive debate about the meaning of the incident. S. CRANDALL, TREATIES, THEIR MAKING AND ENFORCEMENT (1916), 458-459. With or without an initial request, Presidents usually, but not invariably, carried out congressional resolutions. Id., 459-462. For a brief discussion of the historical practice, which has encompassed presidential action alone, President-and-Senate, and Congress, see CONSTITUTION ANNOTATED, op. cit., n. 2, 514-518.

[11] It should be noted that the DOJ letter cites *Goldwater* v. *Carter*, 617 F.2d 697, 706-707 (D.C. Cir.), *vacated and remanded on other grounds*, 444 U.S. 996 (1979), as authority for its proposition that the President has sole authority to terminate. The issue in *Goldwater* was, of course, the President's authority to renounce without involving the Senate, an issue which, as has been noted, supra, n. 10, has been decided variously in practice over the years by the President alone, by the President-and-Senate, by Congress. A question occurs, however, with regard to the citation, for authority's purpose, when the letter, at p. 3 cites Justice Rehnquist's opinion for a plurality of the Supreme Court, seeking to give political question status to the issue and denying the Court of Appeals' authority to resolve it. Id., 444 U.S., 1003. See supra, p. 9.

utory obligation and to direct its performance even over the President's objections. Kendall v. United States ex rel. Stokes. 12 Pet. (37 U.S.) 524 (1838). "[I]t would be an alarming doctrine, that Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution; and in such cases the duty and responsibility grow out of and are subject to the control of the law, and not to the direction of the President." Id., 610. In short, the Court recognized the underlying question of the case to be whether the President's duty to "take Care that the Laws be faithfully executed" made it constitutionally impossible for Congress ever to entrust the construction and implementation of its laws to anybody but the President, and it answered the question in the negative.

Without dealing with the implications of "the unitary executive branch," it should be sufficient for us to note, again, that this commission is advisory, its appointment is not subject to the appointments clause, Article II, § 2, cl. 2, although Congress has provided an identical appointment process, and it reports to both Congress and the President. The lesson of *Morrison v. Olson*, 108 S.Ct. 2597 (1988), wherein was sustained the power of Congress, in appropriate circumstances, to shield an officer performing an executive function, investigation and prosecution of criminal offenses, from plenary presidential control, as well as to authorize the independent counsel to make certain reports to Congress, is that, as the DOJ letter acknowledges, the branches are not "hermetically" sealed off from each other.

In conclusion, rather than follow the *Curtiss-Wright* analysis of exclusive and plenary presidential power, the appropriate analysis, based on the practice of government and on the case law, but even more important, based on the text of the Constitution, is one of concurrent presidential-congressional powers, with interaction and checking of each other. No doubt, there are exclusive powers possessed by the President in the area of foreign affairs. But one must determine on the basis of constitutionally assigned functions what those powers are and what their limits are. Congress is delegated in Article I substantial legislative powers that may be used to structure and to guide the President in the conduct of foreign policy. The instruction to be gleaned from the cases running from *Little v. Barreme* to *Youngstown* and beyond is that a diligent examination of the textual powers delegated to the two branches, informed by the evidence of practice, is required to evaluate claims arising from attempts to exercise the great powers of government.

In that regard, without attempting to be definitive or final in an area in which shifting balances are common, it can be said that the challenged sections appear to be grounded in textual commitments of power to Congress, as well as to be prefigured in some past practices, and that Justice Jackson's analysis in Youngstown would require a strong showing that any exclusive powers of the President have been invaded. This is not to say that such a showing cannot be made as to particular provisions, especially in the context of particularized factual situations, but it is to question whether the effort has yet been made.

JOHNNY H. KILLIAN,
Senior Specialist, American Constitutional Law.

Mr. MOYNIHAN. Mr. President, I wish to say that with repect to the Department of State's disappointing letter, I expected it. It is on the edge of being boilerplate whenever these things come along. I wish to say they do not protect their President this way. The Department of State must know the agonies the department went through as it was learned, among other things, that its elemental duties were subverted and bypassed and suborned. The Department of State should want this legislation. The American Foreign Service Association asks for this legislation.

Mr. President, let us recall those events in 1984 that we recounted in the White House meeting transcript to the Senate earlier, the memorandum of a White House meeting I cited earlier. The then-Secretary of State said: "We cannot do this. I am told by Jim Baker," now Secretary of State, then chief of staff, "that it is impeachable."

Moreover I must, with great respect, take a different view from my friend from North Carolina regarding impeachment. Impeachment is surely not the only sanction the Congress has. That is the equivalent of a firing squad.

Impeachment? My goodness. I suppose only once in our history has there been an impeachment trial. Of course, President Johnson was not, in the end, impeached.

In two centuries we have never removed a President in that manner, and I hope we never will. Because it should never become necessary. And it is this kind of provision which can avoid situations in which impeachment becomes something discussed in the Oval Office or the Situation Room—wherever that meeting took place in June 1984.

For the Acting Secretary of State who knew what happened in those events to write us this way is disappointing, although I certainly would want to record my complete respect for the Acting Secretary. I know he acted and spoke in good faith. But he might have made clear that nothing in this measure has anything to do with prohibitions now in statute or previously in statute and expired, as are almost all the Central American ones. None. This legislation applies only to prohibitions enacted in the future.

The gallant and learned Presiding Officer, Senator GLENN, a hero of the U.S. Marine Corps, ought to be able to speak to the value of having such legislation. I speak only with the caution that a very junior naval ensign might bring to the matter, although I rose to the position of lieutenant, junior grade, after 20 years in the Reserves. Military law specifically requires that officers and men not obey an illegal command. An illegal command is not to be obeyed. And that is there to protect the men of the force, be it Marine Corps or the Navy.

And also to protect not just the people below the source of command, but the people above it. There may be commands that are illegal and ought not be obeyed; the system is protected from what can be erratic, mistaken, emotional judgments.

We do not ever want those days to come again where a Secretary of State is sitting at the White House and saying to the President, "Mr. President, your Chief of Staff has told me that if we go ahead with this, you could be impeached, sir," and have other people say, well, what is impeachment between friends? My heaven, that puts in jeopardy the most important elective office on Earth. It puts the American Presidency in jeopardy. None serve that Presidency well who would wish to see the clear commands of the Congress avoided, and who would resist an effort to make clear that if this were done, it would be done at a cost. Not horrendous, not irreversible, but at a cost. That was absent in the mid-1980's. I think that absence of such a cost, put the Presidency of the United States in harm's way.

We survived that experience only just, Mr. President, only just. I can recall having to go on the radio noonday on Saturday of Thanksgiving weekend of 1986, to respond to the President's then regular Saturday 5-minute broadcast. I said, "Mr. President, I've listened to you, sir. I do not think you understand how serious things are here in Washington. You are in California. I would beseech you, Mr. President, listen to me. Your Presidency, sir, is tottering."

Seventy-two hours later the President came into the press room of the White House and ordered the Attorney General to (and I paraphrase) "find out what is going on in my own building."

Mr. President, as the Congressional Research Service states, the Congress has the clear power to require that powers delegated to the President by the Congress must comply with Congress' terms. Nothing more, nothing less. It is called the rule of law. It does not in any way obviate or impair discussions, negotiation or agreements, save in those very rare and very visible and never to be mistaken situations where Congress has said, "No, you may not do that, Mr. President, nor may persons to whom you have delegated powers of your office." This is a clear response to the intramixture of powers in foreign affairs to which Hamilton wrote 202 years ago.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. HEINZ. I thank the Chair.

(The remarks of Mr. HEINZ pertaining to the submission of S. Res. 154 are located in today's RECORD under "Submission of Senate and concurrent resolutions.")

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MOYNIHAN. The time is equally divided, and I suggest that there does not appear to be a Senator wishing to speak at this moment. I, therefore, suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I would like to take the opportunity to elaborate on the subject of the power of the President and of the Congress, particularly the Senate, in foreign affairs.

In the Federalist Paper No. 75, Hamilton discusses the Presidential power to make treaties by and with advice consent of the Senate, provided two-thirds of the Senate is present and concurs.

Later in that very powerful presentation, Hamilton says of foreign policy, "It must indeed be clear to a demonstration that the joint possession of power in question by the President and the Senate would afford a greater prospect of security than the separate possession of it by either of them." That is the spirit of our Constitution. He made the point that some people say that treaties being law or of a legislative nature should only be the responsibility of the Senate. Then he was quick to say that 26 persons cannot negotiate; 1 person negotiates—hence, Executive power. Executive power also carries out the treaty. So there is an intermixture, there is a joint power.

It is bewildering, if I can say, the number of times one hears the Curtiss-Wright case invoked as an example of unlimited power by the President in foreign affairs. On the contrary, Mr. President. In that case the court was dealing with the action by President Roosevelt carrying out what in effect was a neutrality act in a war in Central America. Congress declared itself neutral as between the parties. I am not sure a present day President would sign such a statute. He might say, "That is interfering with my affairs." President Roosevelt signed it, and he was carrying it out and perforce he did so on his own, but he did so on his own having been instructed by the Congress to so do. That is what we have in that statute.

All the authorities on the Constitution agree with Hamilton and agree with Jay, not the least because they can read of the Constitution and know our history.

The great comment on Curtiss-Wright, which was handed down in 1936, was made by Edward S. Corwin. Professor Corwin wrote a great book on the Constitution and the American Presidency that went to edition after edition (published by the New York University Press) and which addressed the constitutional grants of powers capable of affecting international relations. Mr. Corwin had this to say:

> Where is the Constitution's best authority to determine the course of the United States as a sovereign entity at international law with respect to matters in which other similar entities may choose to take an interest? Many persons are inclined to answer offhand in the President. But they would be hard-put to it if challenged to point out any definite statement to this effect in the Constitution itself.
>
> What the Constitution does and all that it does is to confer on the President certain powers capable of affecting our foreign relations and certain other powers of the same general kind on the Senate and still other such powers on Congress.
>
> But which of these organs shall have the decisive and final voice in determining the course of the American Nation is left for events to resolve.
>
> All of this amounts to saying that the Constitution, considered only for its affirmative grants of power capable of affecting the issue, is an invitation to struggle for the privilege of directing American foreign policy.

An invitation to struggle for the privilege of directing American foreign policy. That is familiar to us. It is called the separation of powers which is at once separated and connected, an intermixture of power, in that nice phrase of Hamilton.

We in the Committee on Foreign Relations believe this is a measure that Presidents need. We think this protects them against persons of excessive zeal or deficient judgment, who would seek to avoid the legitimate exercise of congressional power and responsibility in the field of foreign affairs, all of which makes for grief for the President. Such efforts to evade the laws do not aid him. They do him a disservice and to that extent ought to be discouraged. That is the simple, explicit, direct and hardly vague purpose of this amendment.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

The Senator is recognized.

Mr. PELL. Mr. President, I rise in support of the amendment offered by the senior Senator from New York, Senator MOYNIHAN.

I would note in this regard that one portion of Senator MOYNIHAN's amendment is essentially a reenactment of the Pell amendment that became law, with the support of President Reagan, in 1985. This is the provision that prohibits using foreign aid in a quid pro quo manner to get around prohibitions in U.S. law. I point this out because the administration, in opposing Senator MOYNIHAN's provision, ignores the precedent set by President Reagan in signing into law the provision that I sponsored in 1985.

I would also like to point out that the administration has read more into the scope of Senator MOYNIHAN's amendment than what is clearly intended. The Moynihan amendment is limited to violations of explicit congressional prohibitions. It does not criminalize administration actions that are carried out in areas where Congress has been silent.

Finally, I remind my colleagues that the President will largely control who will be liable to criminal penalties under this proposed legislation. It is, after all, the Attorney General—a member of the President's Cabinet—who would have to institute legal proceeding pursuant to the Moynihan amendment. I cannot imagine that such an action would be instituted by the clearest and most unambiguous violations of or evasions of explicit congressional prohibitions.

Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

Mr. HELMS. May I inquire of the time situation?

The PRESIDING OFFICER. The Senator controls 47½ minutes; the Senator from Rhode Island controls 29½ minutes.

Mr. HELMS. Mr. President, I want to say to my distinguished friend from Rhode Island that I am prepared to yield back my time if he feels that he can do so.

Mr. PELL. Mr. President, I would be prepared to do so, but after these amendments that we are considering now.

Mr. HELMS. I would say I want to look further at the Taiwan amendment. It looks pretty good, but let us go ahead and do the other two.

Mr. PELL. And we will leave it open on Taiwan. If you do approve that, then I will be yielding back the time. If you do not approve it, then I think we ought to see.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the Moynihan amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 275

(Purpose: To require a report regarding a monitoring system for the INF Treaty)

Mr. HELMS. Mr. President, I have an amendment which I believe has been cleared on both sides. I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 275.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 145, after line 22, and the following new section:

SEC. 915. REPORT ON A MONITORING SYSTEM FOR THE INF TREATY.

The Secretary of State is requested to report to the Senate by September 30, 1989, why the United States' Cargoscan x-ray monitoring system for the Intermediate-Range Nuclear Forces Treaty was not installed at the United States' Votkinsk Portal Monitoring Facility inside the Soviet Union by December 1, 1988, as provided for in the terms of the Treaty, and further, when the Cargoscan system will be operational at Votkinsk.

On page 5, in the table of contents, after the item relating to section 914, add the following new item:

"Sec. 915. Report on a monitoring system for the INF Treaty.".

MR. HELMS. Mr. President, the U.S. Cargoscan x-ray machine is already 6 months overdue. It should have been installed in the Soviet Union this past December 1. This amendment merely requests a report on why the Cargoscan is overdue and when the Cargoscan will be installed. As I indicated, there is agreement on both sides on this amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 275) was agreed to.

MR. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who yields time?

MR. HELMS. Mr. President, I yield such time as may be required. I ask unanimous consent that the pending Moynihan amendment be laid aside again so that Senator DOLE may offer an amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Republican leader.

AMENDMENT NO. 276

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. MITCHELL, Mr. PELL, and Mr. LUGAR, proposes an amendment numbered 276.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the Bill insert the following:

(a) FINDINGS.—Congress makes the following findings:

(1) The Stockholm Document of September 19, 1986, the first East-West security accord in more than ten years, brought into force significant confidence and security-building measures in Europe.

(2) The United States has entered into the Negotiations on Confidence and Security Building Measures with the goal of a more stable and secure Europe.

(3) These negotiations have focused on measures to reduce mistrust and misunderstanding about military capabilities and intentions by increasing openness and predictability in the military environment.

(4) The Congress supports President Bush's efforts to make progress in all areas of arms control and supports his recent initiatives in the area of conventional arms control.

(5) The United States and the Soviet Union signed the Agreement on the Prevention of Incidents on and Over the High Seas on May 25, 1972.

(6) The United States and the Soviet Union signed the Nuclear Risk Reduction Center Agreement on September 15, 1987.

(7) The United States and the Soviet Union signed the Agreement on the Prevention of Dangerous Military Activities on June 12, 1989.

(8) The Congress believes that a direct military-to-military communications link between NATO and the Warsaw Pact could prevent misunderstanding in the event of unpredicted military activities or incidents, such as the recent incident in which a Soviet MiG-23 transitted NATO airspace and crashed in Belgium.

(9) The Congress believes such a direct military to military communications link could complement U.S. efforts in the area of confidence-and security-building measures.

(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—the President should raise and request that our NATO allies consider the concept of a direct military to military communications link between NATO and the Warsaw Pact at the appropriate NATO forum.

(c) PRESIDENTIAL REPORT.—The President shall submit to Congress not later than December 1, 1989 a report on the technical feasibility, operational characteristics and costs of establishing a direct military-to-military communications link between NATO and the Warsaw Pact.

Mr. DOLE. Mr. President, it is my understanding this amendment has been discussed with the chairman, Senator PELL, and the ranking Republican, Senator HELMS, and they have no objection to the amendment. I would like to give a little background information.

Mr. President, recently, as we all know, a runaway Soviet Mig-23 fighter crashed into a farmhouse in Belgium killing a 19-year-old man. The plane crashed after a 600-mile flight over West Germany, the Netherlands, and Belgium.

None of these countries was given any warning that the plane was heading their way. In fact, it took the Soviets 10 hours to acknowledge the stray fighter.

It seems to me that this type of incident might not have resulted in the loss of a young man's life had there been a direct channel of communication between NATO and the Warsaw Pact. And, let us face it, unexpected events, even if totally unintended, still set off alarms in each side's military forces.

Unfortunately, at present, only the United States and the Soviet Union have such a direct channel of communication—the so-called hotline.

Representatives from the Federal Republic, the Netherlands, and Belgium proposed shortly after the incident that NATO establish an emergency communications link with the Warsaw Pact.

I'm sure this is a possibility that President Bush will want to explore. I'm also sure that all my Senate colleagues would support such an effort. Therefore, the distinguished majority leader, Senator MITCHELL, as well as Senator PELL and Senator LUGAR have joined me in offering an amendment requiring the President to take a hard look at setting up a direct military to military communications link between NATO and the Warsaw Pact.

The President would report to the Congress on the technical feasibility and cost of establishing such a NATO-Warsaw Pact link. In addition to this report, we hope that the President would raise this idea within NATO. NATO is devoting considerable time to arms control, especially with regard to the conventional arms control talks in Vienna.

It seems to me that an emergency military communications link would complement the types of proposals the West is seeking support for in Vienna, especially at the confidence-and security-building measures talks—also known as the CSBM talks.

As you know, the CSBM talks are aimed at increasing the stability and security of Europe. At the CSBM talks the United States and its NATO Allies have proposed measures that would increase openness and predictability in European military affairs.

Increasing predictability and reducing misunderstanding is what this amendment is all about.

On a bilateral level, the United States has reached similar agreements with the Soviet Union. My colleague from the State of Virginia, Senator WARNER, negotiated the agreement on the prevention of incidents on and over the high seas in 1972. Senator WARNER and the distinguished chairman of the Senate Armed Services Committee, Senator NUNN, played a key role in the establishment of the nuclear risk reduction centers in 1987.

As we learned from those experiences, establishing such links requires not only technical effort, but political effort as well. A direct link between NATO and the Warsaw Pact is only as good as the commitment to use it at the right time. This link will not reduce tensions in and of itself, but, if used appropriately, it could reduce the potential for misunderstanding.

We have all seen promising signs of greater openness in Eastern Europe. Now is the time to expand our efforts at better communication between East and West to NATO and the Warsaw Pact. I would hope that in this new era of glasnost, an opportunity to extend such military openness may be seriously considered.

Mr. President, I have explained the amendment. It could be an important first step. I think it would be welcomed by President Bush.

Mr. MITCHELL. Mr. President, the amendment I am pleased to cosponsor with the distinguished Republican leader calls on the President to study the advisability of an additional confidence- and security-building measure in Europe. The measure which this amendment proposes is a direct military-to-military communications link between NATO and the Warsaw Pact.

The possible value of such a link was illustrated in the recent episode when a Soviet military aircraft flew from Poland across NATO territory until it crashed in Belgium. Despite the fact that NATO was aware of the aircraft in sufficient time to track it and to have our own NATO aircraft follow it and establish that the pilot had ejected, no attempt was made to communicate with Warsaw Pact authorities. Indeed, such an attempt was virtually impossible on such short notice.

The military-to-military link which this amendment proposes would provide an existing and established channel for use in such incidents, where unpredicted military events could lead to unfortunate incidents between the two sides.

As the members of NATO and the Warsaw Pact proceed to explore ways to reduce tension and enhance confidence and security in the ongoing negotiations in Vienna, it is my view that it could prove fruitful to explore the possibility and feasibility of a military-to-military communications link such as that proposed in this amendment. I hope the President will explore this concept seriously with our allies and will find that it can be included as part of the set of measures being negotiated in Vienna.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. PELL. Mr. President, I think this is an excellent amendment and I am very glad, indeed, to be a cosponsor of it. It is a little bit different than the hotline because the existing United States-Soviet hotline runs through the Defense Department to the White House and is essentially designed for communication between political leaders. My understanding in the past was the reason the Soviets did not want it to go from military to military was they want to keep more of a control on it. The proposed NATO-Warsaw Pact communication link, by contrast, will provide for better communication between military personnel in order to avoid misunderstanding. The fact they are willing to go from military to military in this one is I think a good sign, showing they are more willing to trust the military than they were before. I for one look forward to voting for the amendment.

Mr. DOLE. I thank the distinguished Senator, the chairman of the committee.

The PRESIDING OFFICER. If there is no further debate on the amendment, the question is on agreeing to the amendment. Is there further debate on the amendment?

The amendment (No. 276) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent to add the distinguished Senator from North Carolina [Mr. HELMS] as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Wyoming [Mr. SIMPSON] such time as he may require.

The PRESIDING OFFICER. The Senator from Wyoming [Mr. SIMPSON] is recognized.

Mr. SIMPSON. Mr. President, I thank the Chair. I have been listening to the debate with regard to the amendment offered by my friend, the senior Senator from New York, feeling that it indeed is not appropriate. The reasons for my opposition have been very ably outlined by others, including the administration. But I really literally will just take 2 or 3 minutes to express my own reservations.

I guess as we review things here we all wonder how long things last. I think it was a colleague I cannot recall who 10 years ago said, "nothing ever dies around here." I just do not understand what purpose it is to continue to bedevil and beleaguer the Iran-Contra issue. We have spent millions of the taxpayers' bucks on this issue, all to no avail, unless they really want to impeach George Bush now, which seems like not really an appropriate thing to do at all. I would hope we would not seek to impeach George Bush.

Where does all this lead? What is the purpose of it? How long does it go on? It is an extraordinary effort to micromanage the conduct of foreign policy in this country to an extent that is really almost hard to imagine. How long is the exquisite agony of this thing to go forward? I do not understand.

But the amendment goes far beyond even that. It would inhibit the conduct of foreign policy by creating the specter of potential criminal liability for any U.S. Government employee who acts to further a policy for which funding has been denied. Now, think of how many times in the course of our times here, our travail and our work, we deny funding to certain agencies or for some reason to some part of the Government. And that would be done whether that action is made with intent or knowledge to circumvent some congressional prohibition.

I think it is all very well to cut off funding. That is our job. We do that. We are all skilled at that. You are going to cut off funding if they do a number on you. We do that sometimes in a clumsy way. I have done that, cut off funding for programs or policies that we feel to be unwise or not in the best interests of the United States. But I think it is quite another matter, Mr. President, for us to impose criminal liability—and that is the way I read this—or to require a cutoff of funding to a foreign country which might act to support a policy for which Congress has refused funding.

This amendment would also attempt to interfere—I think impermissibly—in the affairs of other countries. If this provision were to become law, as I un-

derstand it, a congressional prohibition on aid to a resistance movement anywhere in the world would become an effort to undermine that support and undercut that support from anywhere in the world, from any source whatsoever.

I cannot believe that we really are contemplating doing this. We would then be giving the signals and telling others they must join us. I cannot imagine anything more patronizing than that. If we deny funding we are saying that other sovereign nations had better shape up and follow us and line up in our camp or we will cut off their funding as well.

I assume that is what that could mean.

I think it is a very bad idea. The President must be able to develop and implement foreign policy. Surely Congress has a role to play, but this is the wrong role on the wrong stage. I cannot possibly imagine what the real purpose of this is. It does not avoid what did happen and what was painful to all of us. It does not prevent it happening again. But it seems to brood upon the issue and go back and try to address something which is just as well left where it is. Anybody will tell you that. If you go up to somebody in a town meeting in Wyoming or another State and talk about Iran-Contra they say "I thought that stuff was over." And it is over. It should be over. It was just an unfortunate and hideous time. The courts have done their work. The people who should pay have paid. The system works.

I see no reason at all to impose this criminal liability which might arise at any time simply when we see a policy going forward where funding has been denied, but yet some action is being taken by someone, or somebody is making a normal diplomatic call. I think that the Government can ill-afford that kind of restraint and constriction.

For that reason, I certainly would not be supportive of the amendment. I can understand from whence it springs, and it springs from a well which may have water in it for the rest of our history. But I do not think we are ever going to do anything much about it unless you wish to impeach a sitting President. There is no other purpose for this continual dogged persistence and obsession as to this unfortunate thing that occurred.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Wyoming yields the floor. Who yields time?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I suggest the absence of a quorum, and ask that the time be equally divided.

The PRESIDING OFFICER. The clerk will call the roll, and the time will be equally divided.

The legislative clerk proceeded to call the roll.

Mr. PELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from GAO dated July 12, 1989.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 12, 1989.

Hon. CLAIBORNE PELL,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate on S. 1160, the Foreign Relations Authorization Act, Fiscal Year 1990, as ordered reported by the Senate Committee on Foreign Relations on June 8, 1989.

Should the Committee so desire, we would be pleased to provide further details.

Sincerely,

ROBERT D. REISCHAUER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1160.

2. Bill title: Foreign Relations Authorization Act, Fiscal Year 1990.

3. Bill status: As ordered reported by the Senate Commmittee on Foreign Relations on June 8, 1989.

4. Bill purpose: The bill authorizes appropriations for the Department of State, the United States Information Agency, the Board for International Broadcasting, and the Inter-American Foundation for fiscal year 1990. It also authorizes funds for a new television broadcasting service to Cuba, and funds for ten "model foreign language competence posts" at overseas missions.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1990	1991	1992	1993	1994
Estimated Revenues					
Section 903: Reclassification of revenues as offsetting collections	−0.3	0.0	0.0	0.0	0.0
Direct Spending					
Section 106 (function 150):					
Estimated budget authority	19.2	20.0	20.8	21.7	22.5
Estimated outlays	15.7	18.1	19.8	21.0	21.9
Section 141: CSRS trust fund (function 600):					
Estimated budget authority	−1.1	−1.2	−1.2	−1.3	−1.3
Estimated outlays	16.0	0.0	0.0	0.0	0.0
Undistributed offsetting receipts (function 951):					
Estimated budget authority	1.1	1.2	1.2	1.3	1.3
Estimated outlays	1.1	1.2	1.2	1.3	1.3
Section 146: FSRD fund (function 600):					
Estimated budget authority	0.1	0.1	0.1	0.1	0.1
Estimated outlays	0.2	0.3	0.3	0.3	0.2
Payments to the FSRD fund (function 150):					
Estimated budget authority	0.1	0.1	0.1	0.1	0.1
Estimated outlays	0.1	0.1	0.1	0.1	0.1
Offsets (function 150):					
Estimated budget authority	−0.1	−0.1	−0.1	−0.1	−0.1
Estimated outlays	−0.1	−0.1	−0.1	−0.1	−0.1
Authorizations of Appropriations					
Function 150:					
Authorized level	4,629.0	0.0	0.0	0.0	0.0
Estimated outlays	3,534.2	699.7	205.4	96.8	13.1
Function 300:					
Authorized level	37.5	0.0	0.0	0.0	0.0
Estimated outlays	32.9	3.9	0.7	0.0	0.0
Net budget impact: Net increase to deficit	3,600.4	723.2	227.4	119.4	36.5

GENERAL

The estimate assumes enactment of this bill and subsequent appropriation of the authorized amounts by September 30, 1989. With a few exceptions, the authorizations are for ongoing programs and the authorized levels are stated in the bill. Outlays for these programs were estimated using historical spendout rates. The net budget impact is estimated outlays minus estimated revenues. The details in the table may not total to the net budget impact due to rounding.

REVENUE PROVISIONS

Section 217 amends the Internal Revenue Code of 1986 to allow non-resident aliens an exemption from paying income taxes on certain educational grants. Under Section 217, grants received from the United States Information agency or the agency for Internaitonal Development would not be counted as gross income and therefore would not be taxable. The Joint Committee on taxation is responsible for estimating the revenue effects of income tax legislation. They have not completed an estimate of Section 217, therefore the revenue impact of this section is not included in the table.

Section 641 prohibits the importation of ivory and other elephant products from countries where elephants are killed illegally and from countries where there is any significant trade in illegally killed elephants. CBO estimates this section will not significantly affect receipts of customs duties or other revenues.

Section 903 reclassifies $250,000 in revenues received by the Office of Munitions Control (OMC) in fiscal year 1990 as offsetting collections. These offsetting collections would be used, subject to appropriations action, by the State Department for expenses associated with the OMC. The net effect of spending the $250,000 is included in the authorization table.

DIRECT SPENDING PROVISIONS

Section 106 authorizes the State Department to transfer certain deobligated funds into their Buying Power Maintenance account. Currently these deobligated funds would lapse because their period of availability has expired. Under Section 106, however, these funds could be reobligated and used to offset losses in the State Department's budget due to exchange rate fluctuations. This provision would therefore reappropriate funds and provide new budget authority to the State Department. Funds deobligated from all Administration of Foreign Affairs accounts except those that are funded by no-year appropriations would be available for this transfer. Currently, the State Department deobligates an average of approximately $19 million per year from the accounts mentioned above. Since these funds would be available for reobligation,

this provision would increase outlays by an estimated $97 million over the projection period.

Section 141 would allow foreign national employees (i.e., citizens of foreign countries who work in United States embassies or consulates) to transfer their credits in the Civil Service Retirement System (CSRS) to a local retirement plan. This section has no net effect on budget authority, but raises outlays by $22 million through fiscal year 1994. The budget impact is spread to two functions of the budget. The one-time transfer of past employee and employer contributions from the Civil Service Retirement and Disability Fund (CSRS Trust Fund) to local plans is expected to result in $16 million in outlays in 1990. In addition, employer contributions to the CSRS Trust Fund—recorded as budget authority—would be reduced by $6.1 million over the projection period. These effects on CSRS are reflected in the budget function 600 estimates. Employer contributions to the local plans would offset the reduction in employer contributions to the CSRS Trust Fund. This offset of budget authority is shown in the budget function 951 portion of the table. The outlays associated with this budget authority represent the impact of the federal payment going to local retirement plans instead of the CSRS Trust Fund.

Section 146 gives certain former spouses of foreign service employees retirement, survivor, and health benefits. The State Department estimates that approximately 20 additional people will be eligible for benefits under this bill. Outlays from the Foreign Service Retirement and Disability (FSRD) Fund are estimated to increase to approximately $.25 million per year before declining due to reductions in the number of beneficiairies. Payments to the fund to amortize the unfunded liability created by the extension of benefits authorized by this section are permanently authorized by section 821 of the Foreign Service Act of 1980. These payments, which are offset within budget function 150, are estimated to require appropriations of about $0.1 million per year for 30 years.

AUTHORIZATIONS

Section 161 requires the Secretary of State to designate ten overseas missions as "model foreign language competence posts", and authorizes such sums as necessary for the funding of these posts. Under the provisions of the bill, all employees permanently assigned to these posts would be required to be competent in the language common to that country. The level of competency required for each position would be determined by the Secretary of State.

The costs associated with this section depend on a number of factors that presently are unknown, including which posts would be designated as model posts, and the level of language competency required for each position. The main costs associated with these model posts would be training costs, such as instructors' salaries. These costs would be higher with larger posts versus smaller posts, and would increase as the level of competency required for employees is increased. The cost of instructors, including personnel and non-personnel costs, is estimated to be approximately $50,000 per year, but is not included in the table because of the uncertainty over the scope of the program.

Section 405 of the bill would prohibit any payment of assessed contributions to the United Nations (UN) or any specialized agency of the UN if the Palestine Liberation Organization (PLO) is admitted as a member to that organization. The budget impact of Section 405 ultimately would depend on the number of organizations granting membership to the PLO. If no such organizations do, this provision would have no budget impact. If the PLO is admitted to all organizations in which the United States lacks the power to veto the admission of new members, however, spending could be lowered by about $200 million per year. No budget impact for Section 405 is included in the table because CBO cannot estimate whether the UN or any of its specialized agencies will admit the PLO.

Section 611 of the bill authorizes the Administrator of the Agency for International Development to provide grants to nongovernmental organizations to purchase discounted commercial debt held by a foreign country. The purchase of the debt by the nongovernmental organization would be contingent upon the country's willingness to undertake conservation projects aimed at improving the environment. Repayment of the debt would be forgiven if the country demonstrates a long-term commitment to the projects.

There is no budgetry impact included in the table for Section 611. The bill does not authorize any funds to pay for new grants, and AID does not expect a large number of agreements with foreign countries to be reached given the difficulty of past negotiations. However, AID currently has several pilot programs in Latin America similar to those authorized by this section.

Under Section 611, nongovernmental organizations would be allowd to retain any interest earned on investments pending their disbursement for approved program purposes. Under current law, interest accumulated on investments would be returned to the Treasury.

Section 705 authorizes $16 million for a new television service for broadcasting to Cuba. The estimate assumes service will begin in the third quarter of fiscal year 1990 after feasibility testing, evaluations, and the hiring of employees has been completed. Outlays of $9 million in fiscal year 1990, and $7 million over the following two years were estimated using spendout rates for similar programs.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO cost estimate: None.

9. Estimate prepared by: Kent Christensen, 226-2840; Cathy Ellman, 226-2820; Eric Nicholson, 226-2680.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Mr. PELL. Mr. President, I am prepared to yield back the remainder of our time.

Mr. HELMS. I yield back the remainder of our time.

The PRESIDING OFFICER. The Chair will note that under the previous order, when all time is yielded back, the vote on this amendment is scheduled to occur tomorrow afternoon at 2:15 p.m.

Mr. HELMS. Mr. President, I would correct the Chair. There will be 20 minutes of debate equally divided, and the vote will be at 2:35.

The PRESIDING OFFICER. The Chair would state to the Senator from North Carolina that that agreement has not been entered into.

Mr. HELMS. Mr. President, but it will be propounded by the majority leader.

Mr. PELL. That is also the understanding of the manager of the bill.

The PRESIDING OFFICER. The Chair will entertain that unanimous consent request when it is asked.

Mr. HELMS. Mr. President, I called it to the attention, I say to the Chair, because I do not want Senators who may be listening to be confused. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF HERBERT D. KLEBER

Mr. MITCHELL. Mr. President, as in executive session, I ask unanimous consent that the nomination of Herbert D. Kleber of Connecticut, to be Deputy Director for Demand Reduction, Office of National Drug Control Policy, be held at the desk until the close of business Tuesday, July 18, 1989.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO PRINT JOHNSTON AMENDMENT—NO. 267

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senator JOHNSTON's amendment No. 267 be printed.

The PRESIDING OFFICER. Without objection, the amendment will be printed as requested.

LEGISLATION REGARDING DESECRATION OF THE U.S. FLAG

Mr. MITCHELL. Mr. President, I ask unanimous consent that the period of time between 10:30 and 12:30 p.m. tomorrow be considered as morning business for the purpose of the introduction of legislation and constitutional amendments relating to the issue of the desecration of the U.S. flag and discussion of that legislation and the flag-burning question, and that Senators be permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair recognizes the Republican leader, Senator DOLE.

RESPONSES TO PHYSICAL DESECRATION OF THE FLAG

Mr. DOLE. Mr. President, first of all, I thank the majority leader for ar-

ranging a period maybe as long as 2 hours tomorrow for a discussion of statutory response to physical desecration of the flag and also a constitutional amendment.

I understand it is not possible to give everyone 1 hour because they are coming in at different times. I urge those who have an interest, particularly in the constitutional amendment, if they desire to speak, we will try to allocate a time sometime during that 2-hour period.

Senator DIXON will be on the floor part of that time and I will be on the floor part of that time.

We encourage everyone who has an interest in the constitutional amendment that they have a chance to look at it.

We now have 53 cosponsors of that amendment, Republicans and Democrats. Hopefully tomorrow prior to introduction we can add to that number.

PRESIDENTIAL APPOINTMENTS

Mr. DOLE. Mr. President, I ask unanimous consent to print in the RECORD strictly for information purposes an update on Presidential appointments.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, July 17, 1989.

Update on PAS Appointments

Number of nominations to date	264
Nominations pending before the Senate	107
Number of nominations confirmed by Senate	156
Rejected	1
Press releases of intention to nominate, but not yet nominated	30
Press releases on individuals who will continue to serve	29

NOMINATIONS PENDING BEFORE SENATE

Name	Title	Date nominated
Martin Lewis Allday	Solicitor of the Department of the Interior	June 13, 1989
Timothy B. Atkeson	Assistant Administrator of the Environmental Protection Agency (International Affairs)	June 6, 1989
David George Ball	Assistant Secretary of Labor (Pension and Welfare Benefit)	April 18, 1989
Andrew Camp Barrett	A member of the Federal Communications Commission for the term expiring June 30, 1990	June 16, 1989
Shirley Temple Black	Ambassador to Czechoslovakia	June 6, 1989
Julia Chang Bloch	Ambassador to Nepal	June 23, 1989
Richard Wood Boehm	Ambassador to the Sultanate of Oman	June 6, 1989
Debra Russell Bowland	Administrator of the Wage and Hour Division, Department of Labor	June 8, 1989
William Braniff	U.S. Attorney for Southern District of California	June 9, 1989
D. Allan Bromley	Director of the Office of Science and Technology Policy	June 6, 1989
William C. Brooks	Assistant Secretary of Labor (Employment Standards Administration)	June 8, 1989
Jacqueline Knox Brown	Assistant Secretary of Energy (Congressional and Intergovernmental Affairs)	June 22, 1989
Keith Lapham Brown	Ambassador to Denmark	May 31, 1989
William Andreas Brown	Ambassador to Israel	May 31, 1989
Morris Dempson Busby	Rank of Ambassador during tenure as Coordinator for Counter Terrorism	June 6, 1989
Frederick Morris Bush	Ambassador to Luxembourg	June 15, 1989
Gilbert E. Carmichael	Administrator of the Federal Railroad Administration	July 11, 1989
Raoul Lord Carroll	General Counsel, Department of Veterans Affairs	June 15, 1989
James E. Cason	Assistant Secretary of Agriculture (Special Services)	May 2, 1989
Allen B. Clark, Jr.	Assistant Secretary of Veterans Affairs (Veterans Liaison and Program Coordination)	July 17, 1989
Richard A. Clarke	Assistant Secretary of State (Politico-Military Affairs)	June 22, 1989
Brian W. Clymer	Urban Mass Transportation Administrator	June 16, 1989
Thomas E. Collins, III	Assistant Secretary of Labor for Veterans' Employment and Training	June 22, 1989
Linda M. Combs	Assistant Secretary of the Treasury (Management)	July 11, 1989
Susan M. Coughlin	Member of the National Transportation Safety Board for the term expiring December 31, 1993	June 21, 1989
Margaret P. Currin	U.S. Attorney for Eastern District of North Carolina	June 16, 1989
J. Michael Davis	Assistant Secretary of Energy (Conservation and Renewable Energy)	June 16, 1989
Thomas C. Dawson II	U.S. Executive Director of the International Monetary Fund for a term of 2 years	July 17, 1989
Michael R. Deland	Member of the Council on Environmental Quality	July 14, 1989
Thomas J. Duesterberg	Assistant Secretary of Commerce (International and Economic Policy)	June 16, 1989
John J. Easton, Jr.	Assistant Secretary of Energy (International Affairs and Energy Emergencies)	June 22, 1989
Michelle Easton	Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education	July 11, 1989
Lugi R. Einaudi	Permanent Representative of the U.S.A. to the Organization of American States, with the rank of Ambassador	June 16, 1989
Edward Martin Emmett	Member of the Interstate Commerce Commission for a term expiring Dec. 31, 1992	June 8, 1989
Raymond Charles Ewing	Ambassador to Ghana	July 11, 1989
Martin C. Faga	Assistant Secretary of the Air Force (Space Policy)	July 11, 1989
Linda J. Fisher	Assistant Administrator for Toxic Substances of the Environmental Protection Agency	July 17, 1989
C. Austin Fitts	Assistant Secretary of Housing & Urban Development	May 31, 1989
Anne Newman Foreman	Under Secretary of the Air Force	July 17, 1989
Arthur W. Fort	Assistant Secretary of State (Administration)	July 11, 1989
Chas. W. Freeman, Jr	Ambassador to Saudi Arabia	June 15, 1989
Claire E. Freeman	Assistant Secretary of Housing and Urban Development (Administration)	June 22, 1989
Lou Gallegos	Assistant Secretary of the Interior (Policy, Budget and Administration)	June 22, 1989
Joseph Bernard Gildenhorn	Ambassador to Switzerland	June 13, 1989
Roy M. Goodman	Member of the National Council on the Arts for a term expiring Sept. 3, 1994	June 7, 1989
Donald Phinney Gregg	Ambassador to the Republic of Korea	Mar. 6, 1989
Stella Garcia Guerra	Assistant Secretary of the Interior (Territorial and International Affairs)	June 15, 1989
Constance Bastine Harriman	Assistant Secretary for Fish and Wildlife, Department of the Interior	June 6, 1989
Henry E. Hockeimer	Associate Director of the U.S. Information Agency	June 21, 1989
Wade F. Horn	Chief of the Children's Bureau, Department of H.H.S	June 21, 1989
Jerry M. Hunter	General Counsel of National Labor Relations Board for a term of 4 years	May 12, 1989
Eric M. Javits	Ambassador to Venezuela	July 11, 1989
Kyo Ryoon Jhin	Chief Counsel for Advocacy, Small Business Administration	June 23, 1989
Jane A. Kenny	Director of the ACTION Agency	July 11, 1989
Gwendolyn S. King	Commissioner of Social Security	July 17, 1989
Herbert D. Kleber	Deputy Director for Demand Reduction, Office of National Drug Control Policy	July 17, 1989
Dennis Edward Kloske	Under Secretary of Commerce for Export Administration	July 14, 1989
Kathleen Day Koch	General Counsel of the Federal Labor Relations Authority for a term of 5 years	July 11, 1989
Skirma Anna Kondratas	Assistant Secretary of Housing and Urban Development (Community Planning and Development)	June 9, 1989
Eugene P. Kopp	Deputy Director of the U.S. Information Agency	July 11, 1989
Kenneth B. Kramer	Associate Judge of the U.S. Court of Veterans Appeals for the term of 15 years	May 5, 1989
Quincy Mellon Krosby	Assistant Secretary of Commerce (Export Enforcement)	May 31, 1989
Thomas D. Larson	Administrator of the Federal Highway Administration	June 6, 1989
Warren A. Lavorel	For the rank of Ambassador during his tenure of service as the United States Coordinator for Multiateral Trade Negotiations	June 16, 1989
Eugene Kistler Lawson	First Vice President of the Export-Import Bank of the United States for a term of 4 years expiring Jan. 20, 1993	June 22, 1989
Antonio Lopez	Associate Director of the Federal Emergency Management Agency	May 18, 1989
William Lucas	Assistant Attorney General (Civil Rights)	May 1, 1989
S. Anthony McCann	Assistant Secretary of Veterans Affairs (Finance and Planning)	June 21, 1989
Jean McKee	Member of the Federal Labor Relations Authority for a term of 5 years expiring July 1, 1994	July 11, 1989
John D. Macomber	President of the Export-Import Bank of the United States for a term of 4 years expiring Jan. 20, 1993	June 22, 1989
Sherrie Patrice Marshall	Member of the Federal Communications Commission for the remainder of the term expiring June 30, 1992	June 16, 1989
Thomas Patrick Melady	Ambassador to the Holy See	June 9, 1989
Jerry Alexander Moore, Jr.	Ambassador to the Kingdom of Lesotho	July 11, 1989
Richard Anthony Moore	Ambassador to Ireland	July 14, 1989
Diane Kay Morales	Assistant Secretary of Energy (Environment, Safety and Health)	April 12, 1989
Daphne Wood Murray	Director of the Institute of Museum Services	July 11, 1989
Della M. Newman	Ambassador to New Zealand and Ambassador to Western Samoa (2 positions)	May 17, 1989
Janice Obuchowski	Assistant Secretary of Commerce for Communications and Information	June 7, 1989
Deborah K. Owen	Federal Trade Commissioner for the unexpired term of seven years from Sept. 26, 1987	June 6, 1989
Edward Joseph Perkins	Director General of the Foreign Service	July 11, 1989

NOMINATIONS PENDING BEFORE SENATE—Continued

Name	Title	Date nominated
Sherrie Sandy Rollins	Assistant Secretary of Housing and Urban Development (Public Affairs)	June 7, 1989
Gerard F. Scannell	Assistant Secretary of Labor (Occupational Safety and Health)	June 22, 1989
Rockwell Anthony Schnabel	Under Secretary of Commerce for Travel and Tourism	June 6, 1989
Melvin F. Sembler	Ambassador to Australia and Ambassador to Nauru (2 positions)	May 5, 1989
John W. Shannon	Under Secretary of the Army	July 17, 1989
Alfred C. Sikes	Member of the Federal Communications Commission for a term of 5 years from July 1, 1988	July 11, 1989
Joy A. Silverman	Ambassador to Barbados; to Dominica; to Saint Lucia; and to Saint Vincent and the Grenadines (4 positions)	July 11, 1989
Michael Philip Skarzynski	Assistant Secretary of Commerce (Trade and Development)	May 1, 1989
Harry M. Snyder	Director of the Office of Surface Mining Reclamation and Enforcement	July 11, 1989
Michael G. Sotirhos	Ambassador to Greece	July 11, 1989
Janet Dempsey Steiger	Federal Trade Commissioner for the term of 7 years from Sept. 26, 1988	July 11, 1989
Richard Burleson Stewart	Assistant Attorney General (Land and Natural Resources)	June 22, 1989
Edward C. Stringer	General Counsel, Department of Education	June 6, 1989
Thomas F. Stroock	Ambassador to Guatemala	July 11, 1989
William Lacy Swing	Ambassador to the Republic of South Africa	July 17, 1989
William H. Taft, IV	U.S. Permanent Representative on the Council of the NATO	June 8, 1989
Evelyn Irene Hoopes Teegen	Ambassador to Fiji; to the Kingdom of Tonga; to Tuvalu; and to the Republic of Kiribati (4 positions)	July 11, 1989
Edward T. Timperlake	Assistant Secretary of Veterans Affairs (Congressional and Public Affairs)	June 15, 1989
John F. Turner	Director of the U.S. Fish and Wildlife Service	June 13, 1989
Michael Ussery	Ambassador to the Kingdom of Morocco	June 6, 1989
Stephen A. Wakefield	General Counsel of the Department of Energy	June 16, 1989
Vaughn R. Walker	United States District Judge for the Northern District of California	Feb. 28, 1989
Alexander Fletcher Watson	Deputy Representative of the U.S.A. to the United Nations, with rank and status of Ambassador E&P	July 11, 1989
John C. Weicher	Assistant Secretary of Housing and Urban Development (Policy Development and Research)	May 16, 1989
Milton James Wilkinson	Deputy Representative of the U.S.A. in the Security Council of the United Nations, with the rank of Ambassador	July 11, 1989
Deborah Wince-Smith	Assistant Secretary of Commerce for Technology Policy	June 13, 1989
Johnny Young	Ambassador to Republic of Sierra Leone	July 17, 1989
Joseph Zappala	Ambassador to Spain	May 2, 1989

Mr. DOLE. I asked Frederick McClure, the chief liaison officer at the White House, this morning to give us a list so we would know how many nominations have been made, how many confirmed, and how many are pending. So he gave me the entire list.

This includes the judges, Ambassadors, commissions, as well as agencies and it is for information purposes only. There are about 35 of these nominations that only have been up less than a week.

I understand from the majority leader only about 18 arrived here prior to June.

Hopefully we can clear a number of these before the August recess because if not we are looking at probably late September before it can be accomplished, and in some areas the reason for some delay is reaching an agreement with the White House on access to FBI information. I understand that we are still negotiating that. That is still being negotiated with the majority leader and with the White House legal counsel, C. Boyden Gray. I would encourage Mr. Gray to try to come to some conclusion on that so we can move ahead on some of the nominations.

I know the majority leader has already indicated we will move as quickly on these as we can.

That is all I have.

Mr. MITCHELL. I thank the distinguished Republican leader.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

Mr. MITCHELL. I will do the best that I can to move forward on as many of these nominees as possible.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Kalbaugh, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PRESIDENTIAL APPROVALS

A message from the President of the United States reported that he had approved and signed the following bills and joint resolutions:

On March 21, 1989:

S.J. Res. 64. Joint resolution to designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".

On March 29, 1989:

S. 553. An act to provide for more balance in the stocks of dairy products purchased by the Commodity Credit Corporation.

S.J. Res. 87. Joint resolution to commend the Governments of Israel and Egypt on the occasion of the tenth anniversary of the Treaty of Peace between Israel and Egypt.

On April 2, 1989:

S.J. Res. 50. Joint resolution to designate the week beginning April 2, 1989, as "National Child Care Awareness Week".

On April 10, 1989:

S. 20. An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes.

On April 13, 1989:

S.J. Res. 43. Joint resolution designating April 9, 1989, as "National Former Prisoners of War Recognition Day".

On May 1, 1989:

S.J. Res. 45. Joint resolution designating May 1989 as "Older Americans Month".

S.J. Res. 92. Joint resolution to invite the houses of worship of this Nation to celebrate the bicentennial of the inauguration of George Washington, the first President of the United States, by ringing bells at 12 noon on Sunday, April 30, 1989.

On May 2, 1989:

S.J. Res. 52. Joint resolution to express gratitude for law enforcement personnel.

S.J. Res. 60. Joint resolution to designate the period commencing on May 1, 1989, and ending on May 7, 1989, as "National Drinking Water Week".

S.J. Res. 84. Joint resolution to designate April 30, 1989, as "National Society of the Sons of the American Revolution Centennial Day".

On May 5, 1989:

S.J. Res. 25. Joint resolution to designate the week of May 7, 1989, through May 14, 1989, as "Jewish Heritage Week".

On May 11, 1989:

S.J. Res. 62. Joint resolution designating May 1989 as "National Stroke Awareness Month".

On May 15, 1989:

S. 968. An act to delay the effective date of section 27 of the Office of Federal Procurement Policy Act.

On May 17, 1989:

S.J. Res. 37. Joint resolution designating the week beginning May 14, 1989, and the week beginning May 13, 1990, as "National Osteoporosis Prevention Week".

On May 22, 1989:

S.J. Res. 58, Joint Resolution to designate May 17, 1989, as "High School Reserve Officer Training Corps Recognition Day".

On May 23, 1989:

S.J. Res. 68. Joint Resolution to designate the month of May 1989, as "Trauma Awareness Month".

On June 9, 1989:

S.J. Res. 128. Joint resolution authorizing a first strike ceremony at the United States Capitol for the Bicentennial of the Congress Commemorative Coin.

On June 15, 1989:

S. 767. An act to make technical corrections to the Business Opportunity Development Reform Act of 1988.

On June 19, 1989:

S.J. Res. 63. Joint resolution designating June 14, 1989, as "Baltic Freedom Day", and for other purposes.

MESSAGES FROM THE HOUSE

At 4:10 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 987. An act to amend the Alaska National Interest Lands Conservation Act, to designate certain lands in the Tongass National Forest as wilderness, and for other purposes;

H.R. 2022. An act to establish certain categories of nationals of the Soviet Union, nationals of Poland, and nationals of Indochina presumed to be subject to persecution and to provide for adjustment to refugee status of certain Soviet and Indochinese parolees; and

H.J. Res. 281. Joint resolution to approve the designation of the Cordell Bank National Marine Sanctuary, to disapprove a term of that designation, to prohibit the exploration for, or the development or production of oil, gas, or minerals in any area of that sanctuary, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 2214. An act to ratify certain agreements relating to the Vienna Convention on Diplomatic Relations;

H.R. 2848. An act to amend the Computer Matching and Privacy Protection Act of 1988 to delay the effective date of the Act for existing agency matching procedures; and

H.J. Res. 174. Joint resolution to designate the decade beginning January 1, 1990 as the "Decade of the Brain".

The enrolled bills and joint resolution were subsequently signed by the President pro tempore (Mr. BYRD).

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 987. An act to amend the Alaska National Interest Lands Conservation Act, to designate certain lands in the Tongass National Forest as wilderness, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 2022. An act to establish certain categories of nationals of the Soviet Union, nationals of Poland, and nationals of Indochina presumed to be subject to persecution and to provide for adjustment to refugee status of certain Soviet and Indochinese parolees; to the Committee on the Judiciary.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents which were referred as indicated:

EC-1393. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report on U.S.-Irish cooperation in agriculture; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1394. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the annual Animal Welfare Enforcement Report; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1395. A communication from the Secretary of Agriculture transmitting a draft of proposed legislation to authorize the Secretary of Agriculture to recover costs of carrying out certain animal and plant health inspection programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1396. A communication from the Director of the Office of Management and Budget, transmitting, pursuant to law, notification of an excess of appropriated funds for the Board for International Broadcasting; to the Committee on Appropriations.

EC-1397. A communication from the Deputy General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize portability of benefits for nonappropriated fund and civil service employees of the Department of Defense when such employees move from one employment system to the other; to the Committee on Armed Services.

EC-1398. A communication from the Secretary of Defense, transmitting, pursuant to law, certification that the current five-year defense program fully funds the support costs associated with the MLRS multiyear program; to the Committee on Armed Services.

EC-1399. A communication from the Chairman of the Board of Governors of the Federal Reserve System, transmitting pursuant to law a report summarizing the recent actions taken by the Board; to the Committee on Banking, Housing, and Urban Affairs.

EC-1400. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report on position-fixing and identification equipment on foreign fishing vessels; to the Committee on Commerce, Science, and Transportation.

EC-1401. A communication from the President of the Corporation for Public Broadcasting, transmitting, pursuant to law, a report on the assessment of the needs of minority and diverse audiences in the area of public broadcasting; to the Committee on Commerce, Science, and Transportation.

EC-1402. A communication from the Secretary of the Interstate Commerce Commission, transmitting, pursuant to law, notification that a decision on Brandywine Valley Railroad Co. Purchase CSX Transportation, Inc. was not issued within the specified time constraints; to the Committee on Commerce, Science, and Transportation.

EC-1403. A communication from the Secretary of Transportation, transmitting, pursuant to law, the thirteenth annual report on the Automotive Fuel Economy Program; to the Committee on Commerce, Science, and Transportation.

EC-1404. A communication from the Acting Chairman of the National Transportation Safety Board, transmitting, pursuant to law, a report on the Board's findings on public aircraft accidents and incidents; to the Committee on Commerce, Science, and Transportation.

EC-1405. A communication from the Chairman of the Federal Energy Regulatory Commission, transmitting, pursuant to law, the annual report of the Commission for fiscal year 1988; to the Committee on Energy and Natural Resources.

EC-1406. A communication from the Acting Assistant Secretary (Environment Safety and Health) of the Department of Energy transmitting, pursuant to law, a draft Programmatic Environmental Impact Statement for the Clean Coal Technology Demonstration Program; to the Committee on Energy and Natural Resources.

EC-1407. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to provide for the operation and maintenance of certain fish propogation facilities constructed in the Columbia River Basin, and for other purposes; to the Committee on Energy and Natural Resources.

EC-1408. A communication from the Secretary of Energy, transmitting, pursuant to law, the final update of the Comprehensive Program Management Plan; to the Committee on Energy and Natural Resources.

EC-1409. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-1410. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report regarding the indentification of long-term research needs of the Great Lakes; to the Committee on Environment and Public Works.

EC-1411. A communication from the Secretary of Labor, transmitting, pursuant to law, the quarterly report on the expenditure and need for worker adjustment assistance training funds; to the Committee on Finance.

EC-1412. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on a review of the policy for the use of the Aid to Families with Dependent Children and Emergency Assistance programs; to the Committee on Finance.

EC-1413. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report on the State Department's personnel practices and affirmative action efforts relative to their impact on minorities and women in the Foreign Service; to the Committee on Foreign Relations.

EC-1414. A communication from the Administrator of the Agency for International Development, transmitting, pursuant to law, the annual report of the Agency for Fiscal Year 1989; to the Committee on Foreign Relations.

EC-1415. A communication from the Assistant Legal Adviser for Treaty Affairs of the State Department, transmitting, pursuant to law, a report on international agreements other than treaties, entered into by the United States in the sixty day period prior to July 6, 1989; to the Committee on Foreign Relations.

EC-1416. A communication from the Privacy Act Officer of the Administrative Conference of the United States, transmitting, pursuant to law, notification of the Conference's intention to establish a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-1417. A communication from the Chairman of the U.S. Merit Systems Protection Board, transmitting, pursuant to law, a report entitled "First Line Supervisory Selection in the Federal Government"; to the Committee on Governmental Affairs.

EC-1418. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to strengthen the intel-

lectual property laws of the United States by providing protection for original designs of useful articles against unauthorized copying; to the Committee on the Judiciary.

EC-1419. A communication from the Independent Auditor of the National Council on Radiation Protection and Measurements, transmitting, pursuant to law, the annual report of independent auditors who have audited the records of the National Council on Radiation Protection and measurements; to the Committee on the Judiciary.

EC-1420. A communication from the Counsel of the Pacific Tropical Botanical Garden, transmitting, pursuant to law, a copy of the audit report of the Garden for the period from January 1, 1988 through December 31, 1988; to the Committee on the Judiciary.

EC-1421. A communication from the Secretary of Education, transmitting, pursuant to law, a document entitled "Final Priorities Transitional Bilingual Education and Special Alternative Instructional Programs"; to the Committee on Labor and Human Resources.

EC-1422. A communication from the Secretary of Education, transmitting a draft of proposed legislation entitled "Student Loan Default Reduction Amendments of 1989"; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-185. A resolution adopted by the City Council of Lauderdale Lakes, Florida favoring legislation to direct that military installations which are closed be used as shelters for the homeless; to the Committee on Armed Services.

POM-186. A resolution adopted by the Senate of the State of Michigan; to the Committee on Armed Services:

"SENATE RESOLUTION 132

"Whereas a vital component of our nation's strategy to deter nuclear war is in its final stages of development and approaching service. This turning point in the technology of defense is the B-2 Stealth bomber. The Stealth bomber represents a giant step in deterring war because of its ability to operate without detection by radar. This aircraft represents advances in technology and materials that will continue to evolve over the next thirty years, according to United States Air Force officials; and

"Whereas of the states under consideration to house the Stealth bomber, Michigan offers many advantages worthy of consideration. These include the efficiency and effectiveness of Michigan's bases and their strong support for Stealth programs, as well as recognized support for the bases by the communities. Michigan's geographical advantage as the heart of the interior of the continent is also an important consideration; and

"Whereas this new cornerstone of our defense system, which is expected to be operational by 1995, is based on highly advanced technology that will continue to be developed. The materials that the Stealth bomber is constructed with and the intricate sensors that are part of the aircraft will be made more effective by their location in a state that is a leader in using all types of technology. The human and technological resources available in Michigan could complement training programs of the military; and

"Whereas Michigan offers a wide range of terrains, including great expanses of open water, and climate as well. These factors could prove invaluable to maintaining a high level of preparedness for personnel operating the Stealth bomber from Michigan bases; and

"Whereas for many years, Michigan has, in effect, been one of the strongest supporters of the research that has gone into the Stealth technology, for Michigan has consistently been among the states with the highest percentage of its federal tax dollars remaining outside the state in support of federal activities, including the defense of our nation. Indeed, year in and year out, Michigan has a low return rate of federal funds. For fiscal year 1988, Michigan received $.72 in return for each tax dollar sent to Washington, the lowest ratio of per capita spending in the nation;

"Whereas the people of Michigan have a strong tradition of commitment to the country, and the unique opportunities to serve by housing the B-2 Stealth bomber reflect Michigan's belief in our nation's strategic efforts to deter nuclear war; now, therefore, be it

"*Resolved by the Senate*, That the members of this legislative body hereby memorialize the Congress of the United States and the Secretary of Defense to house the B-2 Stealth bomber in Michigan; and be it further

"*Resolved*, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the office of the United States Secretary of Defense."

POM-187. A resolution adopted by the City Council of Lauderdale Lakes, Florida expressing opposition to offshore drilling and mining; to the Committee on Energy and Natural Resources.

POM-188. A resolution adopted by the Senate of the State of Hawaii to the Committee on Energy and Natural Resources:

"SENATE RESOLUTION No. 102

"Whereas the United States Congress in 1920 enacted the Hawaiian Homes Commission Act to provide available lands for the use and occupancy of native Hawaiians; and

"Whereas there are about 200,000 acres of available lands statewide with the possibility of more acres being returned to the Hawaiian homes commission; and

"Whereas with statehood, the management of these lands has been placed under the Department of Hawaiian Home Lands, administered by an eight-member commission and a chairperson; and

"Whereas in the nearly seventy years of administration only about 6,000 native Hawaiian families have been granted lease homesites through the Hawaiian home lands program; and

"Whereas approximately 18,000 native Hawaiian families remain on a waiting list to receive homesites; and

"Whereas it is well known that the cost of living, including the cost of housing construction is very high in Hawaii and the development of homesites in the Hawaiian home lands programs is severely hampered because of these high costs; and

"Whereas loans from the Federal Housing Administration, Veterans Administration, and other conventional mortgage sources have been used successfully for the construction of homes, but these funds have not been sufficient; and

"Whereas guaranteed loan programs of about one billion dollars over a ten year period at $100 million per year would help to reduce the cost of improving potential homesites by the development of infrastructure such as roads, water, electricity, and drainage of homestead areas as well as enable lessees to construct homes on Hawaiian home lands; Now, therefore, be it

"*Resolved by the Senate of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989*, That the United States Congress is requested to establish a native Hawaiian rehabilitation guarantee loan fund; and be it further

Resolved, That certified copies of this Resolution be transmitted to the President of the United States Senate, Speaker of the United States House of Representatives, Hawaii's Congressional delegation, the U.S. Secretary of the Interior and the U.S. Secretary of Housing and Urban Development."

POM-189. A resolution adopted by the Senate of the State of Illinois; to the Committee on Energy and Natural Resources:

"SENATE RESOLUTION No. 200

"Whereas coal production and rail transportation are two of Illinois' great industries; and

"Whereas, in the United States Congress there is legislation that would grant eminent domain power for federal seizure of property to coal slurry pipeline companies; and

"Whereas, this legislation, if enacted into law, would threaten the existence of both Illinois coal production and rail transportation; and

"Whereas, this legislation, if enacted, would make Illinois coal less attractive, and adversely affect Illinois coal production and employment; and

"Whereas, this legislation would cause Illinois' railroads to lose coal hauling revenues, which would then cause Illinois counties and taxing bodies to lose revenue; and

"Whereas, this legislation would permanently reduce Illinois' rail employment, which currently provides work for 24,000 Illinoisans; and

"Whereas, this permanent reduction in Illinois' rail employment would adversely affect the retirement benefits of 60,000 Illinoisans; and

"Whereas, this legislation would allow the coal slurry companies' use of Illinois water to flush its product down the pipeline, water that is used for the transportation of farm products by river; and

"Whereas, Coal Slurry pipelines are a bad idea for Illinois; therefore, be it

"*Resolved, by the Senate of the Eighty-Sixth General Assembly of the State of Illinois*, That we oppose H.R. 402 and S. 318 which would enact coal slurry legislation; and be it further

"*Resolved*, That we urge the Illinois Congressional Delegation to actively oppose this legislation that would greatly harm the economy of Illinois; and be it further

"*Resolved*, That suitable copies of this preamble and resolution be presented to the President of the United States Senate, the Speaker of the United States House of Representatives, the United States Secretary of Transportation, and each member of the Illinois Congressional Delegation."

POM-190. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Energy and Natural Resources:

"HOUSE JOINT MEMORIAL NO. 4018

"Whereas meeting the future energy needs of the state of Washington through cost-effective conservation, that is, reduced energy consumption that results from increased efficiency of energy use, production, or distribution, promises a reliable, low-cost, and environmentally desirable resource; and

"Whereas acid rain, ozone depletion, elevated levels of carbon dioxide, and other greenhouse gases associated with fossil-fueled generation make it desirable to defer so long as possible the increased operation and/or new construction of such generating facilities; and

"Whereas new appliances that are more energy efficient offer a significant source of inexpensive energy savings in this state; and

"Whereas the federal Department of Energy is now considering amending its nationwide energy efficient standards that apply to refrigerators, freezers, and television sets, and is expected to enter rulemaking in the near future to consider revised standards for home hot water heating; and

"Whereas the department, in its rulemaking documents, defined and characterized five levels of energy efficiency, the highest being the most efficient; and

"Whereas the National Appliance Energy Conservation Act requires that standards be set to achieve maximum energy savings that are still economical for consumers; and

"Whereas level 4 for refrigerators, level 3 for color televisions, and level 2 for black and white televisions meet the requirements of the act; and

"Whereas Home water heaters represent a particularly large energy savings opportunity;

"Now, therefore, Your Memorialists respectfully pray that the federal Department of Energy, in Docket Number CAS-RM-87-102, adopt energy standards for new refrigerators and freezers at least at level 4 of the standards under consideration; and be it

"Resolved, That the Department in the same proceeding also adopt energy standards for new television sets at level 3 for color sets and at level 2 for black and white sets; and be it further

"Resolved, That the Department in its upcoming proceeding revise standards for home water heating to achieve energy efficiency standards that will capture all energy savings that are technically feasible and economically justified; and be it further

"Resolved, That copies of this Memorial be immediately transmitted to the Honorable George Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

POM-191. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Environment and Public Works:

"SENATE CONCURRENT RESOLUTION NO. 80

"Whereas a national environmental disaster is occurring in Louisiana as an acre of coastal wetlands disappears every fifteen minutes, as one hundred acres disappear every day; and

"Whereas eighty percent of wetland loss in the continental United States is occurring in Louisiana, although that state contains just forty percent of the nation's wetlands; and

"Whereas loss and deterioration of coastal wetlands means the loss and deterioration of fish and wildlife habitat which supports extensive and diverse fish and wildlife populations, including several threatened and endangered species; and

"Whereas the natural balance between land building and subsidence which allow the creation of wetlands was radically altered after the turn of the century by activities of the federal government; and

"Whereas the United States Army Corps of Engineers straightened and channelized upstream tributaries of the Mississippi River for local flood control and navigation purposes and then constructed levees to protect downstream states from resultant flooding; and

"Whereas these levees prevented annual spring overflow of river water and sediment into shallow waters where traditionally they had built and nourished marshes; and

"Whereas for purposes of interstate commerce, the Corps constructed numerous navigation channels through Louisiana wetlands, causing the death of swamp and marsh vegetation by allowing the intrusion of salt water; and

"Whereas the development of oil and gas reserves to supply the energy needs of the nation also contributed to wetland loss as more than eight thousand miles of canals were cut across Lousisana marshes to lay the pipelines that transport outer continental shelf oil and gas to energy-poor states; and

"Whereas the most efficient, effective means available to man to undo the damage he has wrought in the wetlands is the construction of structures to divert fresh water and sediment to starving marshes on a very large scale; and

"Whereas the construction of diversion structures will require a moral and financial commitment by this nation; and

"Whereas President George Bush has made a commitment to preserve wetlands, pledging a new national goal of no net loss of wetlands; and

"Whereas the Congress of the United States now has the opportunity to show its commitment to wetlands preservation as it considers S. 630 by Mr. Breaux and H.R. 1070 by Mr. Livingston during this session of the Congress; and

"Whereas S. 630 dedicates five percent of outer continental shelf revenues to a wetland preservation trust fund, a proposal that is entirely appropriate since national-interest activities, including OCS minerals development, are largely to blame for the loss of Louisiana's coastal wetlands; and

"Whereas waters offshore Louisiana contributed $51 billion to the federal treasury between 1969 and 1986 from oil and gas which made its way to national markets through the maze of pipeline canals which crisscross coastal wetlands; and

"Whereas despite the magnitude of Louisiana's contribution to the nation in terms of energy production, mineral revenues, and navigation, Louisiana ranks forty-third in per capita federal expenditures; and

"Whereas Louisiana not only needs but also deserves assistance as it strives to restore, preserve, and re-create wetlands; and

"Whereas without the federal assistance which is proposed in S. 630 and H.R. 1070 Louisiana's coastal wetlands will be lost forever, along with the extensive national benefits that they provide; Now therefore be it

"Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to enact S. 630 by Mr. Breaux and H.R. 1070 by Mr. Livingston to preserve Louisiana's disappearing wetland habitat; and be it further

"Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the Clerk of the United States House of Representatives and to each member of the Louisiana congressional delegation."

POM-192. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION 38

"Whereas Medicare is a program of health insurance for aged and disabled persons established pursuant to Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 et seq.); and

"Whereas Medicare provides many people in this state who live on fixed and limited incomes with essential health insurance coverage; and

"Whereas for many of these people their pension income and the income earned from savings and other investments are barely enough to pay their expenses, including premiums for Medicare, and to offset inflation; and

"Whereas the Medicare Catastrophic Coverage Act of 1988 imposes a supplemental premium on an estimated 45 percent of the persons eligible for Medicare to cover the costs of new and increased health insurance benefits; and

"Whereas this supplemental premium is $22.50 for each $150 of adjusted federal income tax liability, and will increase to $42 for each $150 of tax liability by 1993; and

"Whereas this unexpected financial burden may result in the loss of financial security for many older persons who have prepared themselves financially for retirement without considering the supplemental premium; and

"Whereas legislation has been introduced in Congress (S. 43) that would repeal the Medicare Catastrophic Coverage Act of 1988; now, therefore be it

"Resolved by the Assembly and Senate of the State of Nevada, jointly, That the Legislature of the State of Nevada hereby urges the Congress of the United States to adopt S. 43; and be it further

"Resolved, That copies of this resolution be prepared and transmitted by the Chief Clerk of the Assembly to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

"Resolved, That this resolution becomes effective upon passage and approval."

POM-193. A resolution adopted by the Senate of the Commonwealth of Pennsylvania; to the Committee on Finance:

"SENATE RESOLUTION

"Whereas group homes or apartments are critical to those family members who no longer live at home; and

"Whereas families in this Commonwealth are in dire need of respite care or special transportation services; and

"Whereas when those with developmental disabilities receive job training, their lives are enhanced; and

"Whereas the waiting lists for physical therapy, occupational thereapy or speech/language therapy have grown longer, with little indication of hope for relief; and

"Whereas families in this Commonwealth are entitled to the security of planning for their children's future living in the neighborhood or community; and

"Whereas this Commonwealth is committed to planning for the future of people with mental retardation; and

"Whereas group homes and other community-based services must be closely monitored and of high quality; and

"Whereas the needs of the individual must be first and foremost; and

"Whereas S. 384 would assist in adapting homes and vehicles to meet the needs of those with disabilities; therefore be it

"Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United States to support and enact S. 384 to provide Medicaid-reimbursed community-based programs to people with developmental disabilities who live with their families, in their own homes or in small, family-scale environments; and be it further

"Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania."

POM-194. A resolution adopted by the Senate of the Commonwealth of Pennsylvania; to the Committee on Finance:

"SENATE RESOLUTION

"Whereas persons with autism are eligible, under Federal guidelines, to receive Supplemental Security Income; and

"Whereas eligibility for Supplemental Security Income automatically renders them eligible for Medical Assistance; and

"Whereas medical assistance pays for the care of other mentally disabled people in Community Living Arrangements; and

"Whereas this case is not reimbursable, under Federal guidelines, for persons who have autism; and

"Whereas this dichotomy within Federal regulations excludes autistic people from living in a supervised setting within the community; and

"Whereas this Federal conflict is inequitable and needs to be changed; therefore be it

"Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize the Congress of the United States to address the issue of Medicaid reimbursement to include autistic people among those eligible to receive community-based residential care; and be it further

"Resolved, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania."

POM-195. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"HOUSE CONCURREENT RESOLUTION No. 2

"Whereas the Medicare Catastrophic Coverage Act of 1988 is the most significant expansion of Medicare since that program was created in 1965; and

"Whereas the Medicare Catastrophic Coverage Act fills gaps in Medicare's existing coverage of hospital and physician services, establishes coverage for new benefits never before included under Medicare, and provides protection not available in private health insurance policies; and

"Whereas the new and expanded Medicare benefits provided in the Catastrophic Coverage Act will be financed through a combination of basic and supplemental premiums paid by beneficiaries; and

"Whereas beginning in tax year 1989, a separate supplemental premium based on income tax liability will be paid by approximately forty-five percent of Medicare beneficiaries; and

"Whereas the Medicare income tax surcharge on retirees going into effect in 1989 will raise marginal tax rates for the elderly substantially above the rates for other taxpayers; and

"Whereas the initial fifteen percent surcharge is scheduled to increase annually to twenty-eight percent by 1993; and

"Whereas Medicare costs to the elderly have increased by three-fourths since 1986 and by 1993 will amount to fifty dollars a month for each beneficiary or one thousand two hundred dollars a year for elderly couples; and

"Whereas this income tax surcharge will impose a serious financial burden on the nation's senior citizens, now therefore be it

"Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States and in particular the members of the Louisiana congressional delegation to abolish the Medicare income tax surcharge imposed by the Medicare Catastrophic Coverage Act of 1988; and be it further

"Resolved, That certified copies of this Resolution shall be forwarded to the secretary of the Senate and the clerk of the House of Representatives of the Congress of the United States, and to each member of the Louisiana congressional delegation."

POM-196. A concurrent resolution adopted by Legislature of the State of Louisiana; to the Committee on Finance:

HOUSE CONCURRENT RESOLUTION No. 24

"Whereas the problem of adult illiteracy is reaching epidemic proportions with an estimated seventeen to twenty-two million functionally illiterate adults in the United States; and

"Whereas it is believed that functional illiterates are going to earn forty-four percent less than those with a high school diploma, are more likely to resort to crime, and are highly dependent on welfare; and

"Whereas Louisiana's concern with this problem is of paramount importance, as Louisiana, compared with other states, has the highest percentage of its population twenty-five years old and over with fewer than five years of schooling and also has the highest high school dropout rate in the nation; and

"Whereas adult education is the only alternative method of earning a high school diploma in Louisiana once an individual leaves the traditional elementary and secondary school system; and

"Whereas the General Educational Development program (GED), administered by the American Council on Education, awards a high school equivalency diploma to those who pass a test in certain skills, with more than seven hundred thousand persons annually taking that test, according to recent figures; and

"Whereas it is in the best interests of all citizens of the United States, as well as the state of Louisiana, to encourage those persons who are illiterate to pursue adult education culminating with the award of a GED high school equivalency diploma, so that they may become more productive members of society; now therefore be it

"Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to enact legislation granting a credit against federal income tax liability for those persons who, through the General Educational Development program, are awarded a high school equivalency diploma; and be it further

"Resolved, That copies of this Resolution be transmitted to the clerk of the United States House of Representatives, the secretary of the United States Senate, and to each member of the Louisiana congressional delegation."

POM-197. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

"Whereas families with children bear a disproportionate share of the federal tax burden in this country; and

"Whereas in 1948 the income tax exemption for a dependent child equalled eighteen percent of the average American income, while in 1988 it equalled four percent, demonstrating a devaluation of children in the United States Internal Revenue Code; and

"Whereas the estimated cost of raising a child today is in excess of two hundred thousand dollars per child; and

"Whereas mortgage and interest rates make it increasingly more difficult for the single-earner family to buy a home; and

"Whereas a heavy tax burden and the high cost of living are causing mothers to seek employment outside of the home, forcing them to leave their children in the care of strangers; and

"Whereas child development experts are predicting serious problems with future generations who do not receive adequate mother love and nurturing; and

"Whereas statistics show that eighty-four percent of employed mothers would rather be home taking care of their chidren; and

"Whereas current federal tax laws discriminate against single-earner families with a parent in the home; now therefore be it

"Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States to enact legislation to raise the federal income tax exemption for dependent children to three thousand dollars, phased to five thousand dollars by 1995, and to grant a credit against federal income tax liability of one thousand dollars per child under the age of five, to low-income, working families in which at least one parent is employed; and be it further

"Resolved, That copies of this Resolution be transmitted to the clerk of the United States House of Representatives, the secretary of the United States Senate, and to each member of the Louisiana congressional delegation."

POM-198. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Finance:

HOUSE CONCURRENT RESOLUTION No. 112

"Whereas participation of pharmacists in the Title XIX program is essential if our Nation is to make available to its indigent citizens prescription drugs necessary to their health and welfare through the Medicaid program; and

"Whereas pharmacists participating in the Medicaid prescription drug program have been traditionally compensated for the costs of prescription ingredients and the labor entailed in dispensing prescriptions; and

"Whereas traditionally, the basis for reimbursement to pharmacists for such costs has been determined by the Average Wholesale Price (AWP) as defined by the state of Lou-

isiana, resulting in such reimbursement being equitable to pharmacy providers as well as the taxpayers of the nation; and

"Whereas the Health Care Financing Administration has seen fit to challenge this traditional and equitable system for reimbursement; and

"Whereas such challenge by the Health Care Financing Administration, if successful in reducing reimbursements, will result in serious harm to the practice of pharmacy, with consequent harm to the Medicaid program itself; Now therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the Congress of the United States, and in particular the members of the Louisiana congressional delegation, to take action necessary to cause the Health Care Financing Administration to cease and desist its efforts to redefine Average Wholesale Price for purposes of reimbursement of pharmacy providers under the Medicaid program; and be it further

"Resolved, That copies of this Resolution shall be transmitted to the secretary of the United States Senate, the clerk of the United States House of Representatives, and each member of the Louisiana delegation in congress."

POM-199. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

ASSEMBLY JOINT RESOLUTION No. 6

"Whereas on July 1, 1988, President Reagan signed into law the Medicare Catastrophic Coverage Act of 1988 (House Resolution 2470, Public Law 100-360), the intent of which was to protect the nation's 32.4 million medicare beneficiaries against the high cost of long-term hospital and medical costs; and

"Whereas the benefits of the Catastrophic Act are to be fully financed by Medicare beneficaries through a combination of an increased flat premium (presently Part B) and supplemental surtax on an individual's tax liability, effective January 1, 1989, and increasing each year until 1993; and

"Whereas the flat monthly premium will increase for all Medicare beneficiaries, over and above what is already being charged, from $4 per individual in 1989 to $10.20 in 1993; and

"Whereas this supplemental surtax will increase a senior citizen's federal income tax liability by 15% in 1989, and will increase that liability to 28% by 1993; and

"Whereas an individual Medicare beneficiary could pay a maximum of $800 surtax in 1989, increasing to $1,050 in 1993, and a couple could pay $1,600 and $2,100 respectively; and

"Whereas the act includes coverage for prescription drugs, enhanced hospital benefits, and places a cap on certain expenses, but does not provide any coverage for long-term home or custodial care as is implied by the title of the act; and

"Whereas all Medicare-eligible individuals who pay federal income tax will have to pay the surtax whether or not they receive benefits; and

"Whereas the Congressional Budget Office estimates that only 7 percent of Medicare recipients will be eligible for benefits under the Medicare Catastrophic Coverage Act each year; and

"Whereas while the act will provide needed benefits to those few senior citizens who have no other access to catastrophic health care coverage, the act offers much less coverage than Medicare supplemental insurance plans offered through the Public Employees' Medical and Hospital Care Act and many other California public employee health plans; and

"Whereas on October 20, 1988, in Long Beach, California, a coalition of public employee groups representing retired state, local government, and school employees testified at a hearing on this issue held by the Assembly Committee on Public Employees, Retirement, and Social Security, and demanded that their situation be addressed; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California hereby memorializes the President and the Congress of the United States to institute a one-year moratorium on the implementation of the Medicare supplemental surtax; and be it further

"Resolved, That the President and the Congress of the United States direct the appropriate agency to study the existing catastrophic health care coverage already available to many state, county, city, and other public and private employees, and assess the necessity of the Medicare Catastrophic Coverage Act for these individuals; and be it further

"Resolved, That the Congress of the United States hold at least two hearings in California to allow California public and private employees to present testimony on their concerns; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, to each member of the appropriate congressional committees, to the American Association of Retired Persons, and to representatives of active and retired public employee organizations."

POM-200. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Finance:

"JOINT RESOLUTION

"Whereas current federal law provides for the elimination of the tax-exempt status for small issues industrial development bonds sold by states to provide capital at reduced interest rates for establishment and expansion of manufacturing enterprises; and

"Whereas the availability of small issue industrial development bonds is critical to Maine's economic development providing expansion, diversification of the manufacturing sector, and quality jobs, protecting industry from foreign competition and encouraging productivity, capacity, and quality critical the long-term stability of the State's manufacturing base; and

"Whereas in the past 5 years, small issue industrial development bonds have resulted in investments of approximately $300,000,000 in Maine and the retention or creation of over 29,000 Maine jobs and have enhanced the tax base of municipalities throughout the State; and

"Whereas, issuance of small issue industrial development bonds for United States manufacturers is an important investment in protecting and strengthening United States manufacturing entities, providing quality jobs, helping to ensure that jobs are retained in the United States and not exported overseas, and assisting in reducing the trade deficit; now, therefore, be it

"Resolved, That We, your Memorialists, respectfully urge that legislation be enacted forthwith which will eliminate the pending sunset on small issue bonds under Section 144 of the Internal Revenue Code of 1986, as amended, so that no interruption in the availability of small issue industrial development bonds occurs; and be it further

"Resolved, That a duly authenticated copy of this Memorial be submitted immediately by the Secretary of State to the Honorable George H.W. Bush, President of the United States, to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States, and to each Member of the Maine Congressional Delegation."

POM-201. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Finance:

"SENATE JOINT RESOLUTION No. 10

"Whereas the Tenth Amendment to the United States Constitution reserves to the states and to the people powers not delegated to the Federal Government; and

"Whereas despite the Tenth Amendment and the United States Supreme Court's prognostication that Congress is disinclined to invade the rights of the individual states, recent Congressional action has expanded the breadth of federal governmental power over the sovereign states; and

"Whereas the intrusive actions taken by Congress include: (1) the creation of unfunded mandates and the shift of fiscal responsibility for its policies to the states; (2) the imposition of sweeping conditions upon grants which, except for the Spending Clause, cannot be independently supported by any provision of the Constitution; (3) the increasing interference with state fiscal policy by eliminating the deductibility of state and local taxes, by imposing an alternative minimum tax on supposedly tax-exempt bonds (which increased the cost of providing state and local services) and by otherwise restricting the availability of tax-exempt financing for public purposes; and (4) the increasing derogation of the states to the role of either private parties or administrative arms of the Federal Government; and

"Whereas the Supreme Court further expanded the breadth of Congress' power to intrude upon the sovereign states in *South Carolina v. Baker,* 108 S.Ct. 1355 (1988), when it ruled that Congress may tax interest on state and local bonds; and

"Whereas although Congress has acknowledged that tax exemptions for state and local general obligation bonds are a legitimate and important method of ensuring the soundness of the nation's infrastructure and the availability of essential services, the *South Carolina v. Baker* decision and the recent Congressional initiatives suggest that Congress may intrude upon the sovereignty of the states and impose a tax on the interest paid on state and local bonds; now, therefore, be it

"Resolved by the Senate and Assembly of the State of Nevada, jointly, That the Nevada Legislature urges Congress to respect the fiscal integrity of the state and local governments, to reject the invitation of the Supreme Court to enact legislation which imposes a tax on interest earned on state and local bonds and to resolve this potential intrusion into the sovereignty of the states; and be it further

Resolved, That copies of this resolution be prepared and transmitted by the Secretary of the Senate to the Vice President of the United States as presiding officer of the

Senate, the Speaker of the House of Representatives and to each member of the Nevada Congressional Delegation; and be it further

"*Resolved*, That this resolution becomes effective upon passage and approval."

POM-202. A joint resolution adopted by the Legislature of the State of Nevada; to the Committee on Foreign Relations:

"ASSEMBLY JOINT RESOLUTION No. 42

"Whereas worldwide production of opium, coca, marijuana and hashish rose significantly during 1988; and

"Whereas the abuse of heroin, cocaine, marijuana and other illegal drugs continues to increase in this country and around the world; and

"Whereas President Bush recently condemned six countries—Burma, Laos, Panama, Syria, Afghanistan and Iran—for their failure to cooperate with the United States in efforts to control the production and distribution of such drugs; and

"Whereas Bolvia, Mexico, Colombia, Peru, the Bahamasa and Paraguay, all of whom have been characterized by the State Department as "close friends and allies" of the United States, are also major producers of illegal drugs or serve as conduits for the drug traffic; and

"Whereas the problem of drug abuse in this country is aggravated by the failure of these countries to take positive, consistent action against the producers and traffickers of illegal drugs; now therefore, be it

"Resolved by the Assembly and Senate of the State of Nevada jointly, That the Legislature of the State of Nevada hereby urges the Congress of the United States to impose appropriate trade and other economic sanctions against these countries; and be it further

"Resolved, That copies of this resolution be transmitted by the Chief Clerk of the Assembly to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

"Resolved, That this resolution becomes effective upon passage and approval."

POM-203. A concurrent resolution adopted by the Legislature of the State of Hawaii; to the Committee on Foreign Relations:

"HOUSE CONCURRENT RESOLUTION No. 379

"Whereas the peoples of the Pacific have navigated by the stars from time immemorial; and

"Whereas the Mauna Kea on the island of Hawaii is acknowledged as one of the world's foremost astronomical observation points; and

"Whereas the Canada-France-Hawaii Telescope, commissioned in 1979, was the first international observatory to select Mauna Kea as its site, thus establishing Hawaii's growing international role in astronomy; and

"Whereas the Science and Engineering Research Council of the United Kingdom was the first international infrared telescope organization to choose Mauna Kea as the site for its United Kingdom Infrared Telescope, commissioned in 1979, further establishing Hawaii's growing international role in astronomy; and

"Whereas the National Aeronautics and Space Administration (NASA) chose Mauna Kea as the site for their NASA Infrared Telescope, commissioned in 1979, as a continuation of the University of Hawaii's 88-inch telescope, further establishing Hawaii's growing international role in astronomy; and

"Whereas the development of international astronomical facilities on Mauna Kea has contributed significantly to the educational, scientific, and economic vitality of Hawaii; and

"Whereas the scientific collaboration among citizens of Canada, France, the United Kingdom, the United States and the State of Hawaii has strengthened the bonds across the Pacific and beyond and proved to be a model for world-wide cooperation in astronomy; and

"Whereas in the coming decades the State of Hawaii will continue to build on the success of the Canada-France-Hawaii Telescope, the United Kingdom Infrared Telescope, and the NASA Infrared Telescope, to expand and secure Hawaii's leading role in astronomy in the Pacific and beyond; now, therefore, be it

"Resolved by the House of Representatives of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1989, the Senate concurring, That on the occasion of the tenth anniversary of the commissioning of the Canada-France-Hawaii Telescope, the United Kingdom Infrared Telescope, and the NASA Infrared Telescope, the contributions of the governments of Canada, France, the United Kingdom, the United States, and the University of Hawaii be recognized in the establishment of Hawaii as an international center of excellence in astronomy; and be it further

"Resolved, That these observatories and their sister facilities on Mauna Kea, maintain and broaden their efforts in keeping the people of Hawaii informed of their achievements in astronomy; and be it further

"Resolved, That certified copies of this Concurrent Resolution be transmitted to the Governor of Hawaii, the Speaker of the United States House of Representatives, the President of the United States Senate, the Chairman of the Board of the Canada-France-Hawaii Telescope Corporation, the Director of the Science and Engineering Research Council of the United Kingdom, the Administrator of the National Aeronautics and Space Administration, the President of the University of Hawaii, and the governments of Canada, France, the United Kingdom, and the United States through their official representatives in Hawaii."

POM-204. A resolution adopted by the Council of the American Library Association relative to electronic dissemination of Government information; to the Committee on Governmental Affairs.

POM-205. A resolution adopted by the Council of the American Library Association relative to access to current information; to the Committee on Governmental Affairs.

POM-206. A resolution adopted by the Council of the American Library Association relative to depository distribution of publications exempted from title 44 requirements; to the Committee on Governmental Affairs.

POM-207. A joint resolution adopted by the Legislature of the State of Alaska; to the Committee on the Judiciary.

"JOINT RESOLUTION No. 19

"Whereas the First Congress of the United States passed a resolution on September 25, 1789, proposing the following amendment to the United States Constitution:

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring*, That the following [Article] be proposed to the Legislatures of the several States, . . . which [Article], when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:

"'Article the second. No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."; and

"Whereas this proposal has been ratified by the legislatures of at least 25 states since September 25, 1789; and

"Whereas the resolution of the First Congress proposing this measure did not establish a date by which the amendment must be ratified; Now be it

"Resolved, That the Sixteenth Alaska State Legislature ratifies the proposed amendment to the United States Constitution as set out in the Congressional Resolution, and be it further

"Revolved, That copies of this resolution, properly certified, shall be sent to the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; to the Honorable Jim Wright, Speaker of the U.S. House of Representatives; and to the Honorable Frank G. Burke, Archivist of the United States; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress."

POM-208. A resolution adopted by the Board of County Commissioners of Sedgwick County, Kansas supporting the adoption of a constitutional amendment to prohibit desecration of the American flag; to the Committee on the Judiciary.

POM-209. A resolution adopted by the City Council of Lewisville, Texas favoring the adoption of a constitutional amendment to exempt certain interest income from taxation; to the Committee on the Judiciary.

POM-210. A resolution adopted by the Council of the American Library Association relative to Federal libraries and information centers as governmental activities; to the Committee on Labor and Human Resources.

POM-211. A resolution adopted by the Council of the American Library Association favoring legislation to support better child care services; to the Committee on Labor and Human Resources.

POM-212. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Labor and Human Resources:

"HOUSE CONCURRENT RESOLUTION No. 139

"Whereas many states, including Louisiana, have authorized a state Silver-Haired Legislature to serve as an educational and political forum which provides opportunities for older persons to voice opinions and concerns pertaining to the general welfare of senior citizens; and

"Whereas though many laws concerning senior citizens are products of state legislatures, the United States Congress considers and enacts what are perhaps the most significant laws that affect senior citizens; and

"Whereas a National Silver-Haired Congress would serve as a national forum for responsible involvement of the elderly in the

federal legislative process; Now therefore be it

"*Resolved*, That the Legislature of Louisiana does hereby request the Congress of the United States to establish a National Silver-Haired Congress and to take such action as shall be necessary to implement such a forum; and be it further

"*Resolved*, That a copy of this Resolution be transmitted to the secretary of the United States Senate, the clerk of the United States House of Representatives, and to each member of the Louisiana congressional delegation."

POM-213. A joint resolution adopted by the Legislature of the State of Maine; ordered to lie on the table:

"JOINT RESOLUTION

"Whereas there is currently pending in the 101st United States Congress, a bill, H.R. 2, which would raise the federal minimum wage to $4.55 an hour; and

"Whereas this measure has been passed by the United States Congress, and is to be presented to the Honorable George H.W. Bush, President of the United States, for his signature; and

"Whereas President Bush has publicly indicated that he may veto this bill; and

"Whereas the federal minimum wage has not been increased since 1981; and

"Whereas even with the modest increase proposed by the 101st Congress minimum-wage earners will not keep up with the inflation which has occurred over the past 8 years; and

"Whereas the Maine Legislature has passed increases in Maine's minimum wage and has found these increases to have a negligible negative impact on this State's business climate; and

"Whereas the Governor of Maine, along with numerous other governors, has gone on record in support of an increase in the federal minimum wage; and

"Whereas the President is proposing a capital gains tax break that will give those taxpayers who earn more than $200,000 annually a tax cut of over $30,000 per year; and

"Whereas the pending minimum wage bill is a true measure of a "kinder and gentler nation"; now, therefore, be it

"*Resolved*, That We, your Memorialists, respectfully recommend and urge the President of the United States to sign H.R. 2 and thereby provide economic justice to the wage earners who are the backbone of our economic system; and be it further

"*Resolved*, That duly authenticated copies of this joint resolution be submitted immediately by the Secretary of State to the Honorable George H.W. Bush, the President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of the Maine Congressional Delegation."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 681. A bill to require the Secretary of the Treasury to mint and issue coins in commemoration of the 100th anniversary of the statehood of Idaho, North Dakota, South Dakota, Washington, and Wyoming, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. KERRY (for himself and Mr. JEFFORDS):

S. 1328. A bill to declare the policy of the United States regarding the protection of U.S. Government satellites against antisatellite attack and to limit the use of funds for testing any antisatellite weapon against an object in orbit around the Earth; to the Committee on Armed Services.

By Mr. PRYOR:

S. 1329. A bill to subject persons involved in the resolution of insolvent financial institutions to Federal conflict of interest and disclosure laws; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HELMS:

S. 1330. A bill to provide protections to farm animal facilities engaging in food production or agricultural research from illegal acts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BENTSEN:

S. 1331. A bill to amend the Consolidated Farm and Rural Development Act to authorize the Secretary of Agriculture to provide grants to States to establish funds to provide assistance for the construction of water and waste facilities, and for other purposes; to the Committee on Environment and Public Works.

By Mr. MURKOWSKI:

S. 1332. A bill to provide for realignment and major mission changes of medical facilities of the Department of Veterans Affairs; to the Committee on Veterans Affairs.

By Mrs. KASSEBAUM (for herself and Mr. DOLE):

S. 1333. A bill to amend the International Air Transportation Competition Act of 1979; to the Committee on Commerce, Science, and Transportation.

By Mr. PACKWOOD:

S. 1334. A bill for the relief of Tube Forgings of America; to the Committee on Finance.

By Mr. BENTSEN:

S. 1335. A bill to temporarily suspend the duty on certain furniture and seats; to the Committee on Finance.

By Mr. GRAHAM (for himself and Mr. MACK):

S. 1336. A bill to provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission; to the Select Committee on Indian Affairs.

By Mr. GRAHAM:

S. 1337. A bill to establish a Mildred and Claude Pepper Scholarship Program; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referrred (or acted upon), as indicated:

By Mr. HEINZ (for himself, Mr. DIXON, Mr. BYRD, Mr. D'AMATO, Mr. FORD, Mr. BOREN, and Mr. HELMS):

S. Res. 154. Resolution expressing the sense of the Senate on the agreement to be signed between the Government of the United States and the Government of the Republic of Korea to co-produce the "Korean Fighter Program" [KFP]; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY (for himself and Mr. JEFFORDS):

S. 1328. A bill to declare the policy of the United States regarding the protection of U.S. Government satellites against antisatellite attack and to limit the use of funds for testing any antisatellite weapon against an object in orbit around the Earth; to the Committee on Armed Services.

SATELLITE SECURITY ACT

Mr. KERRY. Mr. President, on May 12, 1989, President Bush called for an expansion of the open skies plan of President Eisenhower, asking all nations, beginning with the United States and Soviet Union, to open up their skies to surveillance flights and satellites of other nations. President Bush said we must "open up military activities to regular scrutiny and, as President Eisenhower put it, 'convince the world that we are lessening danger and relaxing tension.' "

The single most important means we have of monitoring the Soviet Union are our satellites. And the biggest impediment to implementing the President's open skies policy are weapons that would destroy satellites, antisatellites, or Asat's.

I am convinced that the United States is now in a unique position to both stop the further development of the ASAT threat to our satellites—and even to pressure the Soviet Union into dismantling its existing Asat's through negotiating an Asat treaty.

Accordingly, on behalf of Senator JEFFORDS and myself, I am filing legislation, entitled the Satellite Security Act of 1989, which is designed to cause the Soviets to enter into negotiations with the United States on constraining antisatellite weapons, to open up their laser test facilities at Sary Shagan and any other suspect sites to the United States, and to continue their 6-year moratorium on the testing of Asat's against objects in orbit as the price for the U.S. forbearing its own testing of Asat's against objects in orbit.

The legislation sets tough standards for Soviet behavior as a precondition to the United States moratorium.

In essence, it says that the United States will not test any weapon against an object in orbit only if the President determines that the Soviet Union has not tested any of its weapons against objects in orbit, and that the Soviet Union has agreed to open up its laser facilities to the United States to allow us to monitor them, and that the Soviet Union has agreed to negotiate in good faith with the United States on constraining antisatellite weapons.

As the Office of Technology Assessment has found, the United States is more dependent on satellites to perform important military functions than is the Soviet Union. Current Soviet Asat capabilities are very limited. Our satellites face a far more serious threat from future Soviet Asat's if development is not halted now. Stopping further testing of Asat's by both sides is an effective means of protecting our satellites—and of furthering the President's own open skies proposal.

Recently, the Soviets have taken steps which suggest they may be prepared to go a long way to meet our concerns about verifying an antisatellite control agreement. On July 8, the Soviets actually opened up their most secret laser test facility to United States scientists and Congressmen, who were permitted to inspect the laser transmitter, receiver, transformer and beam director at the Sary Shagan laser site. At the site, Soviet Academy of Sciences vice president Yevgeny Velikhov stated that the Supreme Soviet's new commission on the military budget may even order the laser to be abandoned when it issues a report in the fall.

The importance of the new Soviet attitude cannot be underestimated. The Reagan administration in rejecting Asat arms control said the chief reason we couldn't negotiate such a treaty was because we could never verify it. Now, the Soviets are saying to us—we are ready to join you at the bargaining table on antisatellite weapons, and we are already willing to open up our most significant military test sites to demonstrate our openness to verification.

There are also significant intelligence implications of the Soviet action. The Soviets now contend—and these contentions appear to be supported by the initial technical indices of Soviet equipment at the Sary Shagan laser test site—that their lasers are only capable of producing 2 to 20 kilowatts of power. If this is true, Soviet laser capabilities are less than 1 percent of those previously claimed by the Department of Defense, the Strategic Defense Office, and the CIA in public statements about Soviet laser capabilities.

I am therefore today asking that the Intelligence and Armed Services Committees seek a formal review by the Central Intelligence Agency and Defense Department of judgments concerning Soviet laser capabilities over the past decade.

For example, in the March, 1985 CIA report, "Soviet Directed Energy Weapons: Perspectives in Strategic Defense," the Agency stated:

[The Soviets] already have a ground-based laser that could be used to interfere with U.S. satellites. * * *. The directed-energy R&D site at the Sary Shagan proving ground in the central U.S.S.R. could provide some anti-satellite capabilities and possibly ABM prototype testing in the future.

A 1987 version of the annual publication, "Soviet Military Power," prepared by the Department of Defense, asserted that the Soviet lasers at Sary Shagan are "capable of damaging sensitive components" of satellites in orbit.

General John Piotrowski, head of the U.S. Space Command, has repeatedly testified that the Soviets possess laser capabilities that could kill a satellite in low Earth orbit, wound a satellite as high as 750 miles, and do in-band damage to those in geosynchronous orbit at 22,300 miles. Last year's edition of Soviet Military Power reiterated that the Soviets possessed "at least one laser believed capable of an anti-satellite mission."

The former Director of the Strategic Defense Office, Lt. Gen. James Abrahamson, testified before the Congress in March 1987 that the Soviets are "clearly ahead" of the United States in ground-based lasers.

These assessments have been a significant factor in congressional consideration of U.S. antisatellite programs, and in connection with the strategic defense initiative. However, information made available by the Soviets in connection with their unpredecented opening of the Sary Shagan site to a group of private United States scientists, journalists, and Congressmen on July 8, 1989, suggests that these assessments may not have been correct.

Specifically, during the site inspection, the Soviets stated that the most powerful laser at the Sary Shagan facility, the carbon dioxide laser, is capable of between 2 and 20 kilowatts of output, power ratings a tiny fraction of that needed to sustain even minimal antisatellite capabilities.

The technical data provided by the Soviets to the scientists in connection with the visit, as well as photographs of the laser equipment, power sources, beam director, cooling systems, mirrors, computers and related technologies, provide significant support for these statements by the Soviets.

This new information raises the question of whether past assessments of the Soviet laser program have significantly overestimated or exaggerated the military capability of the lasers themselves and of the program overall. If the information provided in the course of the site visit proves to be correct, it suggests a possible intelligence failure of substantial proportions.

The implications of such an intelligence failure could be profound, because the findings would undermine the very foundation of the rationale for the billions we have spent on the strategic defense initiative and the current crash program that is being pushed for directed energy anti-satellite weapons.

The implications for verification are also profound. For a number of years, I have advocated that the United States seek to negotiate a comprehensive verification accord with the Soviets to establish overall procedures for verifying all relevant military technologies.

It is increasingly clear that the Soviet Union is now willing to accept the principle of onsite inspection as part of verification, to supplement national technical means. They accepted this principal in the INF Treaty, and they are demonstrating the probability of their accepting it in the realm of Asat's by opening up Sary Shagan in this dramatic way.

I hope we will use the apparent new willingness of the Soviets to permit us to verify their military research and development programs in the area of lasers to secure limits on Soviet military developments in the area of antisatellite weaponry. As the Office of Technology Assessment has found, the United States is more dependent on satellites to perform important military functions than is the Soviet Union. Current Soviet Asat capabilities are very limited. Our satellites face a far more serious threat from future Soviet Asat's if development is not halted now. Stopping further testing of Asat's by both sides is an effective means of protecting our satellites—and of furthering the President's own open skies proposal.

The Congress stopped all testing of the now-defunct U.S. Asat system for 2 years because of concerns about the potential injury to U.S. national security if both sides move forward with the testing, development and deployment of Asat's.

The President's own national security advisor, Brent Scowcroft, recently coauthored an Aspen Study Group report which concluded that "we find it hard to identify a set of circumstances in which the benefits of using the limited existing Asat systems markedly outweigh the potential risks." Scowcroft wrote that "all scenarios involving the use of Asat's, especially those surrounding crises, increase the risks of accident, misperception, and inadvertent escalation."

Given these concerns, I believe further restraint regarding Asat's can be useful to the United States to force the Soviet Union to open up its secret laser facilities at the outset and ultimately to dismantle any existing Asat capability is has, as a result of negotiations with the United States resulting in an Asat Treaty.

I also believe it is essential for the United States to insure that its satellites remain survivable in any case. Accordingly, the legislation would require the administration to conduct a

study of the effect of current and potential Asat's on the survivability of United States satellites, and the costs to the United States for making our satellites survivable should the Soviets develop new Asat's. I believe such a study could help both the administration and the Congress understand better the costs to the United States should the Soviets move forward with their Asat program.

In recent years, many Senators have joined me in opposing United States antisatellite testing, so long as the Soviets too do not test. Now the Soviets have volunteered to open up their secret laser test sites for inspection, and are considering dismantling the sites altogether, I hope that this year's legislation, which is designed to bring about the ultimate dismantling of all Asat's, will receive even more support.

I ask unanimous consent that the full test of the legislation be entered into the RECORD, as well as the Washington Post article, "Soviet Laser Said To Pose No Threat," which describes this historic opening up of the Soviet laser, and a summary of the findings of the United States scientists who visited the Soviet test site.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1328

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Satellite Security Act of 1989".

SEC. 2. FINDINGS

Congress makes the following findings:

(1) The United States Government relies on many of its satellites for communications, reconnaissance, electronic intelligence, remote sensing, detection of nuclear explosions, early warning of attack, monitoring compliance with arms control agreements, and monitoring the activities and movements of hostile military forces.

(2) Such satellites constitute vital integral parts of many United States weapon systems, command, control, and communications systems, and intelligence systems.

(3) It is essential to the national security of the United States that United States Government satellites survive antisatellite attacks.

(4) The Soviet Union has not tested its only antisatellite weapon, a coorbital system, against an object in space since the summer of 1982.

(5) The further development and testing of new antisatellite weapons by the United States and the Soviet Union may make all United States Government satellites and all Soviet satellites vulnerable to each other's antisatellite weapons.

(6) It is in the national security interest of the United States to discourage the development and testing of new antisatellite weapons by the Soviet Union.

SEC. 3. DECLARATION OF POLICY

(a) PROTECTION OF SATELLITES.—It is the policy of the United States to protect United States Government satellites—

(1) by discouraging Soviet efforts to improve antisatellite capabilities; and

(2) by conducting research, development, and testing on techniques that increase the capability of such satellites to survive physical attack, including such techniques as hardening, resistance, jamming, orbit selection, maneuvering, ground segment improvements, orbiting of spare satellites, deployment of dormant satellites, and signature reduction.

(b) ANTISATELLITE LIMITATION NEGOTIATIONS.—It is the sense of Congress that the President should initiate and conduct good faith negotiations with the Soviet Union with a view to achieving an agreement that provides for (1) the strictest possible limitations on the development, testing, production, and deployment of antisatellite weapons by the United States and the Soviet Union, (2) the dismantling of existing Soviet antisatellite weapons, and (3) verification of the compliance with the agreement.

SEC. 4. LIMITATION ON TESTING OF ANTISATELLITE WEAPONS

Notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by any Act may be obligated or expended to test any weapon against an object in orbit around the Earth until the President certifies to Congress either—

(1) that the Soviet Union has conducted, after August 1982, a test of any weapon against an object in orbit around the Earth;

(2) that the President has requested the Soviet Union to permit the United States to deploy cooperative monitoring and verification technologies at the Soviet laser test site at Sary Shagan and at each other location that the President suspects the Soviet Union to be using for laser testing, and that the Soviet Union has refused to cooperate in good faith to make it possible for the United States to do so; or

(3) that the President has attempted to negotiate with the Soviet Union to establish limitations on the development, testing, production, and deployment of antisatellite weapons, and that the Soviet Union has refused to negotiate in good faith on such limitations.

SEC. 5. REPORT TO CONGRESS ON THE SURVIVABILITY OF UNITED STATES SATELLITES

(a) IN GENERAL.—Not later than March 1, 1990, the President shall prepare and transmit to Congress a report on—

(1) the capabilities of United States Government satellites to survive antisatellite attacks; and

(2) the capabilities of the United States (A) to monitor the development, testing, production, deployment, and use of antisatellite weapons by the Soviet Union, and (B) to verify Soviet self-restraint in the development, testing, production, deployment, and use of such weapons.

(b) CONTENT OF REPORT.—The report shall include reviews and analyses of—

(1) the capabilities of United States Government satellites to survive attack by antisatellite weapons, and the future actions necessary to ensure the capability of United States Government satellites to survive such attacks through the end of the twentieth century;

(2) an assessment of the effects on United States national security of—

(A) Soviet antisatellite capabilities;

(B) the development, by the Soviet Union, of antisatellite capabilities symmetrical to potential future United States antisatellite capabilities;

(C) the development, by the Soviet Union, of the capability to destroy high-altitude United States Government satellites, including those satellites in geosynchronous orbit; and

(D) an agreement entered into by the United States and the Soviet Union that provides for (i) a verifiable ban on the development, testing, production, and deployment of all antisatellite weapons, and (ii) the dismantling of all existing antisatellite weapons;

(3) the actions that could be taken to improve the capability of United States Government satellites to survive antisatellite attacks and the projected budgetary costs of taking such actions—

(A) if the Soviet Union were not to improve its antisatellite capabilities;

(B) if the Soviet Union were to develop antisatellite capabilities symmetrical to potential future United States antisatellite capabilities;

(C) if the Soviet Union were to develop the capability to destroy high-altitude United States Government satellites, including those satellites in geosynchronous orbit; and

(D) if the United States and the Soviet Union were to enter into an agreement providing for (i) a verifiable ban on the development, testing, production, and deployment of all antisatellite weapons, and (ii) the dismantling of all existing antisatellite weapons;

(4) United States capabilities to monitor and verify Soviet antisatellite capabilities;

(5) techniques by which the United States could improve capabilities to monitor and verify Soviet antisatellite capabilities, including—

(A) development, testing, production, and deployment of monitoring equipment, onsite verification equipment, and other verification equipment;

(B) onsite inspections; and

(C) negotiation of an agreement between the United States and the Soviet Union providing for the use of telemetry by each that is readable by the other and other cooperative means with the Soviet Union; and

(6) the desirability of and prospects for limiting Soviet antisatellite capabilities by agreement, including any agreement that would limit development, testing, production, or deployment of kinetic kill, directed energy, nuclear, or any other form of antisatellite weapon or that would limit any other antisatellite capability for any altitude.

(c) FORM OF REPORT.—The President shall transmit the report in a classified form to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate, the Select Committee on Intelligence of the Senate, the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives, and the Permanent Select Committee on Intelligence of the House of Representatives. The President shall also transmit to Congress an unclassified summary of the report.

SOVIET LASER SAID TO POSE NO THREAT—AMERICAN SCIENTISTS INSPECT INSTALLATION HIGHLIGHTED BY PENTAGON

(By R. Jeffery Smith)

SARYSHAGAN, U.S.S.R., July 8—A Soviet laser said by the Pentagon to be capable of damaging U.S. satellites is probably too weak to do so, a group of U.S. congressmen and independent American scientists said after examining it today.

The laser is housed here in a large, white building on the desolate steppes of Soviet

Kazakhstan, an area that also serves as the Soviet Union's official test range for research on ballistic missile defense.

The building's bulk has been a source of extra suspicion about the laser, but today it just added to the drama of the Americans; five-hour visit.

During the Reagan administration, several sketches of the laser building, drawn from U.S. satellite photos, were featured prominently in the Defense Department's annual publication, "Soviet Military Power," as an illustration of the Soviet Union's pursuit of missile defense research much like that being conducted under the controversial U.S. Strategic Defense Initiative.

A 1985 Pentagon pamphlet said, "The facilities there are estimated to include * * * a laser that may be capable of damaging some components of satellites in orbit and a laser that could be used in testing for * * * [missile defense] applications."

By 1987, the Pentagon language was changed to predict potential laser damage only to "sensitive components" of satellites, but in 1988, the department again said the Soviets had a ground-based laser "with some capability to attack U.S. satellites."

Princeton University physicist Frank von Hippel said today, after inspecting the laser's transmitter, receiver, transformer and beam director, that "it looks like a tool that's been left out to dry for 25 years. It's got 19 counter-top-sized ruby lasers, a Welding-sized laser, 1960s vintage computers and a couple of one-meter mirrors in an air-conditioned building.

"A two-year college in the United States could produce the same in one of its laboratories," von Hipple added.

Rep. Jim Olin (D-Va.), a former vice president for General Electric with training as an engineer, said he had concluded that "it's not the killer weapon people said it was."

However, Olin added that he agreed with an assessment by Rep. John M. Spratt Jr. (D-S.C.), a member of the Armed Services Committee, that the laser "could be ancillary to an antisatellite weapons system."

The Defense Ministry officials who hosted today's visit were noticeably discomfitted by the group's presence at the laser site and by some of the detailed questions that were raised, objecting in one instance even to providing the exact dates of the laser's design and construction.

Another senior researcher described the work here as only "a statistical problem," and his colleagues declined to amplify their claims that the dual laser system would be used only for highly accurate tracking of airplanes and satellites, not for their destruction.

No information was provided about either the unrelated, but obvious, missile defense research being conducted nearby or the supposed deployment of tactical lasers in the area. Photos were also prohibited during the dusty, 45-minute ride to the laser site from a military airfield.

But once there, Soviet Academy of Sciences vice president Yevgeny Velikhov led the group into key areas of the plant and invited visitors to take many photos, including some that will doubtless be studied closely by the U.S. intelligence community.

Velikhov said the laser was similar to a device the U.S. Air Force has tested from Hawaii during several space shuttle flights. The Soviet laser was used on three or four occasions last year in similar tests involving a special satellite equipped to reflect its beam and make its position obvious.

Velikhov said that he does not support the continuing operation of the laser and that the Supreme Soviet's new commission on the military budget may order the laser abandoned this fall.

FACTSHEET ON SARY SHAGAN LASER FACILITY

Based on the notes of Tom Cochran, Senior Staff Physicist, NRDC; Christopher Paine, Staff Aide to Senator Kennedy; and Frank von Hippel, Physicist, Princeton University, taken during a site visit organized by the NRDC and the Soviet Academy of Sciences, 8 July 1989.

Location: Near the eastern shore of Lake Balkhash in Kazakhstan (45 55' N, 73 30' E).

Purpose: Conduct research on laser radar.

History: Main building completed late 1979's. CO_2 laser building completed in mid 1982. Facility is currently undergoing modifications. Last attempt to track a space target was in August, 1988.

Description: Two low-power laser systems are optically combined into a single beam. One laser system consists of 0.7 micron pulsed ruby laser beam for target locations and the second consists of a 10.6 micron CO_2 laser used for target tracking. The 0.7 micron ruby laser beam is formed by optically combining the output of 19 five-watt lasers.

SYSTEM CHARACTERISTICS

Ruby Laser: 19 lasers with five-watt average power; 10 pulses per second; 30 nanosecond pulse length; and no phase matching between lasers.

Optics: Beams combined into one beam, then transmitted through a hole in the middle of the back of the main mirror of a 1.5 meter reflecting telescope to a 15 centimeter diameter secondary which reflects and spreads the beam track onto the front of the 1.5 meter gold-plated primary mirror. The wide beam is then reflected to the beam director mounted on the outside of the end of the building. The beam director has an aperture of about 1 meter.

The telescope is also used to collect the light reflected from the target, which returns along the optical path to a television camera and photo multiplier tube collector.

There are no adaptive optics or cooling of optical elements.

CO_2 Laser: One 20 kilowatt output continuous laser 1-2 kilowatts transmitted through the optics to the beam director; 15 percent optical efficiency (light energy/electrical energy); 5 percent efficiency (light energy/total energy consumption); therefore approximately 400 kilowatts total energy consumption. Laser beam diameter: 1.5 cm-3 cm; 250 kv high voltage generator for electron beam gun. Water cooling.

Optics: The beam is transmitted through an underground tunnel to the basement of the main (ruby laser) building, where it is then reflected onto a vertical path up to a 30-cm diameter 45-degree-angle mirror located between the 1.5 meter telescope and the beam director. This mirror sends the light to the beam director.

Adaptive optics: None.

Mirror cooling: None.

Computer control equipment: 1960's computer technology with hard-wired transistor circuitry; punch card data storage.

Power Supply: 5 megawatts for entire complex, including lasers, computers, lighting and air conditioning.

Other information: The facility has been used a few times per week to track aircraft equipped with a retroreflectors and beam sensing equipment at ranges up to 60-70 km. Attempts also made to track a multi-purpose Cosmos satellite using a mirror reflector mounted on the satellite. Satellite with reflector carries no beam-sensing devices. Continuous tracking not achieved.

High saline content of CO_2 laser cooling water from Lake Balkhash requires pipe replacement in three years rather than the expected twenty.

Total project cost to date: "A few tens of millions of rubles."

LARGE UNDERGROUND ROOM

Nearby, there is a very large underground room (perhaps 200 feet long, 100 feet wide and 40 feet high). The room was unfinished and empty. The group was told that it had originally been built around 1970 for a high-powered laser. It was underground and equipped with blast doors because one idea had been to power the laser with electromagnetic pulses generated by chemical explosions. There was a heavy blast wall on the ground above and next to the room which was evidently designed to protect the roof of the room from the blast waves. However, the project had been abandoned at an early stage.

By Mr. PRYOR:

S. 1329. A bill to subject persons involved in the resolution of insolvent financial institutions to Federal conflict of interest and disclosure laws; to the Committee on Banking, Housing, and Urban Affairs.

ETHICS IN THRIFT RESOLUTIONS ACT

● Mr. PRYOR. Mr. President, just a few weeks ago I was on the Senate floor to release a report on an investigation of the Federal Savings and Loan Insurance Corporation's First South receivership, undertaken at my request by the General Accounting Office. The investigation of the receivership at this failed Arkansas thrift uncovered several incidents of egregious misconduct by receivership employees. The investigation found that furniture and fixtures of the failed thrift were sold at fire sale prices at an auction open to receivership employees only. In a separate incident, the GAO investigated a contract with the receivership's former property manager to appeal tax assessments on receivership properties. The GAO found that the former property manager signed the contract only 2 days after resigning his receivership position, and he subsequently collected payment from the receivership for work that he had performed while a receivership employee. The Federal Home Loan Bank Board's Office of the Inspector General was informed about these incidents, but in both cases it found no wrong doings, primarily on the basis that receivership employees are not Federal employees subject to Federal conflict of interest statutes.

On the day I released the report of these findings, I promised to introduce legislation to eliminate the type of problems seen at the First South receivership, and today I am here to make good on that promise. Today I am introducing the Ethics in Thrift Resolutions Act which will make not

just receivership employees, but all employees involved in the resolution of insolvent financial institutions subject to Federal conflict of interest and disclosure laws. I understand that the Senate Banking Committee has expressed interest in including provisions of this type in the conference report on the savings and loan reform bill, so today I am sending similar legislative language to the chairman of the committee, Senator RIEGLE.

The savings and loan industry is rife with scandals, but I fear that we may not have seen the worst of the scandals yet. I believe the activities of the Resolution Trust Corporation, which is being established by the S&L reform bill to resolve the hundreds of billions of dollars in failed thrifts, are a fertile breeding ground for more scandals. The Senate version of the S&L reform bill currently directs the Oversight Board of the RTC to draft conflict of interest and ethics rules that will apply to RTC employees and independent contractors of the RTC. I want these standards to be unequivocal, however, so I am introducing this bill which will codify the standards in law. In the event the conferees on the S&L reform bill choose not to include these provisions in their bill, I hope the bill I am introducing will move through Congress quickly. Taxpayers are currently facing a bill of over $150 billion to clean up after the misdeeds of S&L operators; they will simply refuse to pay for cleaning up after unethical regulators.●

By Mr. HELMS:

S. 1330. A bill to provide protection to farm animal facilities engaging in food production or agricultural research from illegal acts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARM ANIMAL FACILITIES PROTECTION ACT OF 1989

Mr. HELMS. Mr. President, today I am introducing the Farm Animal Facilities Protection Act which is designed to prevent, deter, and penalize crimes against U.S. farmers, ranchers, food processors, and agricultural researchers.

The ability of the United States to feed its citizens adequately is responsible for America's being the greatest Nation in the world. And because of research breakthroughs in the agricultural community, improvements in food processing, and the continued hard work of U.S. farmers, the future of American agriculture is looking brighter.

However, I believe we are seeing a serious threat to U.S. agriculture, and we must now act to ensure that our food productivity is not disrupted.

There is a small group of citizens who are opposed to the agricultural use of animals, and several of these groups are turning to increasingly militant actions to express their views. In addition to the normal hardships experienced by the agricultural community, they are now forced to contend with vandalism, arson, liberation of animals, and even bomb threats. There is a long list of such animal rights terrorism including a recent firebomb attack on a Monterey, CA, meat company.

On Thursday, April 27, a worker at the plant reported a fire. Upon investigation, the Monterey fire marshall reported that several incendiary devices had been placed under the building. Also, trucks parked at the plant's loading dock were painted with slogans such as "meat kills." Fortunately, no one was harmed in the incident, but a worker could have easily been trapped in the plant if the fire had spread. This attack—committed while workers were in the plant—illustrates the fanaticism of some animal rights activists who blatantly disregard the danger to human life to make their point.

An animal rights group did claim responsibility for the crime as part of their ongoing campaign to make animal abuse unprofitable. Similar acts are becoming more frequent and more severe in all areas of the United States, and there is reason to believe that such activists are part of an international animal rights terrorist group.

Mr. President, such illegal acts against agriculture harm not only the farmers, ranchers, processors, and researchers, but all the rest of us as well. The cost of such crimes is enormous and are ultimately paid for by the consumer. In addition, valuable research data is lost or destroyed which could benefit everyone. The animal rights zealots who perpetrate these crimes are showing a total disregard for the rights of others.

Mr. President, the Farm Animal Facilities Protection Act is aimed at the animal rights terrorists who have decided dialog and negotiations are not effective methods for achieving change. Its goal is to stop the vigilante-style lawlessness and destruction that is becoming the calling card of animal rights activists. This legislation would make it a Federal crime to break into, vandalize, remove animals, trespass, or demonstrate the intent to disrupt a farming, ranching, processing, or agricultural research operation. This bill will help law enforcement efforts in preventing further terrorist acts, and aid the States in protecting the agriculture community.

U.S. agriculture needs action to prevent these violent acts and over 35 national, regional, and State agriculture groups support this legislation. I have several letters expressing their support, and I ask unanimous consent that these letters be included in the RECORD.

Mr. President, it is apparent that current laws are not discouraging this type of violence, and terrorist activities will continue unless the full power of the legal system is used. We must act to stop these acts of animal rights terrorism before they spread even further, and to prevent further harm to U.S. agriculture and the public well-being.

There being no objection, the letters were ordered to be printed in the RECORD, as follow:

AMERICAN FEED INDUSTRY ASSOCIATION,
Arlington, VA, June 24, 1989.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.
(Attn: Mark Eaton.)

DEAR SENATOR HELMS: On behalf of the American Feed Industry Association [AFIA], I wish to commend you in the strongest possible terms for your intention to introduce legislation that will protect U.S. farms, ranches and agricultural research facilities from the disturbing increase in animal rights violence.

Your bill, which make it a federal crime to break into, vandalize, remove animals, trespass or demonstrate the intent to disrupt farming, ranching or ag research through such activity, will give clear and necessary direction to federal law enforcement agencies so they may more efficiently deal with such criminal activity.

AFIA applauds your foresight, and pledges to work with you and your staff in any way you deem necessary to ensure passage of this important legislation during the 101st Congress.

Sincerely,

STEVE KOPPERUD,
Vice President.

NATIONAL CATTLEMEN'S ASSOCIATION,
Washington, DC, June 30, 1989.

Hon. JESSE HELMS,
United States Senate, Washington, DC.

DEAR SENATOR HELMS: On behalf of the National Cattlemen's Association, I would like to applaud your intention to introduce legislation to provide better protection for U.S. farms, ranches and agricultural research facilities from the continued increase in threatened or actual animal rights violence.

By making it a federal crime to break into, vandalize, remove animals, trespass or demonstrate the intent to disrupt farming, ranching or agricultural research through such activity, your bill will strengthen federal law enforcement agencies capability to deal with these deplorable criminal acts. Cattlemen across the country are seriously concerned about animal rights violence. Several of our state association offices have been vandalized and their staff has received death threats.

The National Cattlemen's Association salutes your foresight and initiative in introducing this necessary legislation. We would like to work with you and your staff in whatever ways that will expedite passage of this bill.

Sincerely,

ROBERT D. JOSSERAND,
President, National Cattlemen's Association.

NATIONAL BROILER COUNCIL,
Washington, DC, July 14, 1989.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: We at the National Broiler Council want to write you to let you know of our support for your intention to introduce the Farm Animal Facilities Protection Act of 1989. This legislation will not only protect our nation's food supply, this measure will protect farmers and ranchers from illegal acts.

This bill is long overdue. It will now be a federal crime to break into, vandalize and/or destroy property. And the act gives the Secretary of Agriculture authority to conduct investigations and provides for a civil right of action by the owners of the farm animal facility against the violator.

In our support for the bill, NBC wants you to know that we will work with you and your staff in any way necessary to ensure passage of this legislation.

Sincerely,

MARY M. COLVILLE,
Director, Government Relations.

NATIONAL TURKEY FEDERATION,
Reston, VA, July 6, 1989.

Hon. JESSE HELMS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: Enclosed is a copy of the National Turkey Federation July newsletter. We thought you would be interested in our story about the anti break-in legislation you will reportedly introduce later this month. As you can see, we are totally supportive of your efforts. We are extremely pleased to see that you are leading this effort to protect the property rights of all farmers across the nation.

We are eager to provide whatever assistance possible to ensure prompt passage of this legislation and look forward to working closely with you and your staff in this regard.

Sincerely,

STUART E. PROCTOR, Jr.,
Executive Vice President.

NATIONAL GRANGE,
July 5, 1989.

Hon. JESSE HELMS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: A disturbing upswing in animal rights violence against agricultural facilities is developing. Several life threatening incidences in California provide graphic evidence of this trend.

On January 29th, the Dixon (California) Livestock Auction was a victim of arson, causing $250,000 in damage to the holding pens and out buildings. The owners of the facility, which has never been the site of protests, pickets, or even letters, were shocked. Earth First!, a radical environmental group which deplores public land grazing, called a local newspaper to claim credit for the fire. On the same evening, Earth First! and the Animal Liberation Front claimed credit for vandalizing the Sacramento offices of the California Cattlemen's Association, the California Woolgrowers Association, and the California Council on Agriculture. "Agribusiness Kills" and "Livestock Destroys" were spray painted on the outside of the building, locks were jammed, windows were acid-etched, and paint was thrown on the walls.

The Animal Liberation Front took credit for an attempted fire bombing of a Monterey, California meat processing plant on April 27th in which employees were present when an incendiary device exploded. The target of the attack was the Luce-Carmel Meat Co., which is a 24-hour operation. The fire was reported by a worker at 4:04 a.m. After it was extinguished, investigators arrived from Monterey and the state's Arson Bomb Unit reporting that "multiple incendiary devices" were discovered beneath the building. A fire investigator said it was apparent that the intent was to burn down the entire building.

The list of such violence is getting longer and longer and is ranging from Delaware and Maryland to the West Coast. It is no longer an issue that can be addressed on a state-by-state basis. Federal legislation is required if we are to deal with these criminal activities that interfere with interstate commerce.

On behalf of the National Grange, I wish to commend you on your intention to introduce legislation that will protect United States' farms, ranches, and agricultural research facilities from this increase in animal rights violence. Your bill, which will make it a federal crime to break into, vandalize, remove animals from, trepass, or demonstrate with the intent to disrupt farming, ranching, or agricultural research through such activity is needed. It will give clear and necessary direction to the federal law enforcement agencies, so they may more effectively and efficiently deal with such activity.

The National Grange applauds your foresight and will work with you and your staff to ensure the passage of this important legislation during the 101st Congress. Thank you for your firm leadership on this issue and may you be joined in your efforts by many of your Senate colleagues.

Sincerely,

ROBERT E. BARROW,
National Master.

LIVESTOCK MARKETING ASSOCIATION,
Kansas City, MO, July 5, 1989.

Hon. JESSE HELMS,
U.S. Senate, Washington, DC.

DEAR SENATOR HELMS: The Livestock Marketing Association, which represents nearly 1300 member businesses that market livestock, wishes to commend you for your plans to introduce legislation that would make it a federal crime to break into, vandalize, trespass or remove animals from farms, agriculture research facilities and other agricultural facilities.

As you may be aware, one of our members recently experienced first-hand the violence that has now entered the animal rights movement with the destruction by fire of his market facility in California. A radical animal rights group has publicly taken credit for destroying this market owner's livelihood. Unfortunately, under current State law, the penalties for such a heinous act of vandalism are relatively minor.

From this incident, our member businesses have acquired a unique appreciation for the need for stronger criminal laws in instances of domestic terrorism against agriculture related facilities. Thus, we deeply appreciate your foresight in initiating legislation that will more realistically and effectively deal with such criminal acts.

We look forward to working with you and your staff in the successful passage of this vitally needed legislation.

Sincerely

NANCY ROBINSON,
Associate Manager, Government and Industry Affairs.

NATIONAL LIVE STOCK PRODUCERS ASSOCIATION,
Wheatridge, CO, July 6, 1989.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Attention: Mark Eaton.

DEAR SENATOR HELMS: The National Live Stock Producers Association is a federated livestock marketing cooperative encompassing 12 regional marketing agencies and 4 credit corporations. Being a cooperative, we are in a position to represent our patron's views and concerns.

Therefore, with the current increase of destructive activities by some animal rights groups aimed at livestock producers, livestock markets, and research facilities, we are in full support of your introduction of legislation to protect these entities. Making it a federal crime to harm or disrupt farming, ranching or agricultural research should enable federal law enforcement agencies to deal with these groups in a more effective manner.

National Live Stock Producers is encouraged by your interest in dealing with this most important issue and fully supports the passage of this legislation in the 101st Congress.

Sincerely,

HAROLD E. LEIN,
Executive Vice President.

IDAHO CATTLE ASSOCIATION,
Boise, ID, July 5, 1989.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR: As a former member of your Hickory office staff, it is my pleasure to write you on behalf of the Idaho Cattle Association in support of your proposal regarding criminal actions against farm, ranch, and ag research operations.

Please add ICA to the already long list of agricultural organizations supporting your efforts.

So-called "animal rights" and "Earth First!" terrorists have unfortuantely made such legislation necessary, as they engage in activities which threaten human life and limb as well as America's agricultural economy.

Thank you for your leadership on this issue and on so many other issues critical to the survival of our freedom and way of life in this nation.

Most respectfully,

GARY GLENN,
Executive Vice President.

AMERICAN VEAL ASSOCIATION, INC.,
Naperville, IL, June 30, 1989.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Attention: Mark Eaton.

DEAR SENATOR HELMS: On behalf of the American Veal Association (AVA), I would like to thank you for your intention to introduce legislation that will aid in the protection of farms and research facilities from the sometimes destructive, illegal acts of some animal rights groups.

A veal farmer from California was the target of one of the more violent groups last summer. His barn was broken into, slogans were painted on the walls, and several animals were stolen. Farmers are fearing for their safety, as well as for that of their farms. Your bill, making these violent ac-

tions as federal crime, may help to deter these groups from their vigilante tactics.

Thank you, once again, for listening to the concerns of the American farmers and by responding with a bill.

Sincerely,

BARBARA HUFFMAN,
President, American Veal Association.

PENNAG INDUSTRIES ASSOCIATION,
Ephrata, PA, June 26, 1989.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: On behalf of PennAg Industries Association, a 510-member agribusiness trade association, I would like to voice support for your intent to introduce legislation to protect farms, ranches, and agricultural research facilities from violence.

Your proposal to make it a federal crime to break into, vandalize, remove animals, trespass, or disrupt farming activities will present clear and necessary direction to federal law enforcement agencies in dealing with such criminal activity.

Our democratic society could not survive for long if we all vandalized people with whom we disagree. The discussion of societal problems and their resolution can be accomplished within our existing system of government, and as rational citizens we must all condemn criminal activity, whatever the motivation.

Thanks so much for supporting the rights of our members to engage in their business operations knowing that terrorists will be severely punished.

Sincerely,

DAVID R. BRUBAKER,
Executive Vice President.

COMMISSION OF FARM ANIMAL CARE, INC., PURDUE UNIVERSITY,
West Lafayette, IN, June 28, 1989.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HELMS: On behalf of the Commission of Farm Animal Care, Inc., I commend you for your intention to introduce enabling legislation during the 101st Congress to protect U.S. farms, ranches, and agricultural research facilities from the increase in animal rights intimidation and violent conduct.

This bill, which will make it a federal crime to break into, vandalize, take animals, trespass or demonstrate the intent to disrupt farming, ranching or agricultural research through such activity, will send a clear message to federal law enforcement agencies on how to deal directly with such criminal activity.

The Commission of Farm Animal Care (list of members and organizations attached) praises your vision and help, while pledging to work with you and your staff in any way you deem necessary to ensure passage of this significant legislation.

Sincerely yours,

JACK L. ALBRIGHT,
Secretary-Treasurer.

NATIONAL BOARD OF FUR FARM ORGANIZATIONS,
St. Paul, MN, June 27, 1989.

Hon. JESSE HELMS,
Dirksen Senate Office Building, Washington, DC

Attention: Mark Eaton.

DEAR SENATOR HELMS: America's family fur farmers strongly support legislation to protect farms, ranches, and agricultural research institutions from unauthorized break-ins, release of animals, and other destructive activities engaged in by animal rights organizations.

The National Board of Fur Farm Organizations has actively supported this type of legislation in Minnesota, Wisconsin and other states. In our view, it is important to enact a federal law making it a crime to steal farm or agricultural research animals, to vandalize farms and research facilities or to otherwise disrupt lawful agricultural activity through violent means.

Please be assured of our full support for the legislation you plan to introduce. We look forward to working with you and your staff toward enactment at the earliest possible date.

Sincerely,

THOMAS L. GIBSON,
President.

PACIFIC EGG & POULTRY ASSOCIATION,
Modesto, CA, June 30, 1989.

Hon. JESSE HELMS,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Attention: Mark Eaton.

DEAR SENATOR HELMS: The Pacific Egg & Poultry Association applauds you for your intention to introduce legislation that will protect U.S. farms, ranches, and agricultural research facilities from the disturbing increase in animal rights violence.

Your bill, which will make it a federal crime to break into, vandalize, remove animals, trespass or demonstrate the intent to disrupt farming, ranching or ag research through such activity, will give clear and necessary direction to federal law enforcement agencies so they may more efficiently deal with such criminal activity.

Our member firms and individuals are ready and anxious to work with you and your staff to insure passage of this important legislation. Please let us know how we can assist.

Sincerely,

CLIFF H. OILAR,
Executive Director.

By Mr. BENTSEN:

S. 1331. A bill to amend the Consolidated Farm and Rural Development Act to authorize the Secretary of Agriculture to provide grants to States to establish funds to provide assistance for the construction of water and waste facilities, and for other purposes; to the Committee on Environment and Public Works.

CONSTRUCTION OF WATER AND WASTE FACILITIES

● Mr. BENTSEN. Mr. President, most Americans take water and sewer service for granted. However, there are many Americans who lack even basic water and sewer facilities. Tens of thousands of Americans along the United States-Mexico border live in colonias. These communities, most often adjacent to existing cities and towns, lack the facilities that most Americans consider basic necessities of life. They have no fire departments, paved roads, or water and sewage services.

In October 1988 the General Accounting Office, an investigative arm of Congress, released a report on colonias that had been prepared at my request. In what it described as a conservative estimate, the GAO said 110,000 Texans live in 566 colonias along the border. The report summed up the situation—

These substandard housing subdivisions in rural districts consist of small plots of land with few or no roads and polluted water and inadequate sewage facilities; colonias are in unincorporated parts of counties, adjacent to American cities and towns along the border.

The land for colonias was usually acquired by migrant workers and other low-income groups of Mexican descent. Because colonias exist in unincorporated parts of counties, local jurisdictions have not been obligated to provide water and sewage services, and the new owners have lacked the financial means to acquire such services. These substandard living conditions pose a health problem to the colonias' residents as well as to the entire populations of the border counties, according to the Texas Water Development Board.

The GAO report also pointed out that the border counties had a much higher rate of gastrointestinal diseases than did the rest of the State or Nation. It stated

These diseases are often caused by poor hygiene, polluted water (common in the colonias), and contaminated foods.

Mr. President, as the GAO report stated, these health problems pose a threat not only to residents of the colonias but "to the entire population of the border counties". From a health standpoint, the colonias are almost a Third World nation. Their residents are subject to diseases that are rarely seen in more prosperous areas that have proper sanitation. However, their location and the infectious nature of most diseases poses a threat to the health of many Americans who do not themselves live in colonias. Contagious diseases don't stop in the colonias. They may start there, but, as the GAO report pointed out, they certainly do not stop there.

The Texas Legislature recently enacted a State law creating a revolving loan program to help colonias and other unincorporated rural areas provide water and sewage services. The legislature earmarked 20 percent of the authorized $500 million in Texas Water Development Bonds for this program. My legislation will provide a needed Federal component to that effort.

Under the Texas program, colonias in economically distressed counties would be able to obtain long-term, low-interest loans from this fund. Counties would be considered economically distressed if unemployment is 25 percent above the State average and per capita income is 25 percent below it. All border counties would qualify.

Only those colonias occupied as of June 1, 1989, will be eligible for loans from the new revolving fund. In addition, loans will be made only in coun-

ties that have acted to prevent development of future colonias.

The legislation I am introducing today would authorize $50 million per year in funding through the Farmers Home Administration to match the State funding of revolving loan program. The match would be 50 percent Federal funds and 50 percent State funds. It would not add to the budget, because the funding would be within existing program ceilings.

As in the Texas program, these Federal funds would be targeted to economically distressed areas, defined as counties with unemployment 30 percent above the national average and per capita income 30 percent below it. All counties along the United States-Mexico border would qualify.

To avoid duplication and reduce paperwork, the program would be administered by individual States with FmHA auditing the process.

It would not create a new bureaucracy. In fact, it would cut down substantially on the redtape and overhead costs normally associated with FmHA Water and sewer programs by requiring the States to administer this program. Since State funds will be at least half of the total, the States will have every incentive to manage these funds wisely.

Under this bill, FmHA funds would be made available to States for use in revolving loan funds. The States would disburse money to help local residents in economically distressed counties to bring needed water and sewer services to those areas which are now without them. In order to qualify for Federal money, the States would have to put up matching funds.

Channeling these funds through State revolving loan funds will result in a very high degree of leverage, giving more work on the ground for a smaller contribution of Federal dollars. The Texas Water Resources Board estimates that each Federal dollar into the Texas State fund will result in three dollars going out to the colonias.

Mr. President, I was born on that border, in the Rio Grande Valley of South Texas, and many members of my family are still there. My roots run deep there. The valley is my home.

But the issue here is much more than the old home ties. The issue is whether tens of thousands of U.S. citizens are going to have a share of hope and opportunity that we call the American dream. The issue is whether children will continue to walk through ankle-deep sewage after a hard rain, and whether we as a nation want to endure the expense to taxpayers and the suffering to sick children and their families of the rampant disease problems resulting from the lack of the most basic amenities. Amenities that most Americans take for granted—a sink with running water, a flush toilet. The issue is whether the citizens of these areas will continue to be the poorest of the poor, consigned to Third World living and economic conditions, or whether they will have an opportunity to be a part of the American dream.

Mr. President, I urge my colleagues to join me in supporting passage of this needed legislation, and I askm unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1331

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANTS FOR CONSTRUCTION OF WATER AND WASTE FACILITIES.

The Consolidated Farm and Rural Development Act is amended by inserting after section 306 (7 U.S.C. 1926) the following new section:

"SEC. 306A. GRANTS FOR CONSTRUCTION OF WATER AND WASTE FACILITIES.

"(a) DEFINITION.—As used in this section, the term 'economically distressed area' means a county—

"(1) with—

"(A) a per capita income that is less than or equal to 70 percent of the national average, as determined by the Bureau of Statistics, Department of Labor; and

"(B) an unemployment rate that is greater than or equal to 130 percent of the national average, as determined by such Bureau; or

"(2) on the border of the United States and Mexico.

"(b) GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.—

"(1) GENERAL AUTHORITY.—The Secretary is authorized to provide grants to each State in order to assist the State in establishing an economically distressed area revolving fund (hereinafter in this section referred to as a 'Fund') to provide financial assistance for the construction of wastewater treatment facilities and water supply projects.

"(2) SCHEDULE OF GRANT PAYMENTS.—The Secretary and each State shall jointly establish a payment schedule, under which the Secretary shall pay to each State the amount of each grant to be made to the State under paragraph (4)(A). The payment schedule shall be based on the intended use plan of each State under subsection (d)(3), except that the Secretary shall make payments—

"(A) in quarterly installments; and

"(B) as expeditiously as possible, but no later than the earlier of—

"(i) 2 years after the date that the State obligated moneys from the Fund; or

"(ii) 3 years after the date that the Secretary provided grants to the State under paragraph (1).

"(3) REQUIREMENTS FOR RECEIVING GRANTS.—In order to receive a grant under paragraph (1), a State shall enter into an agreement with the Secretary. In the agreement, a State shall agree to—

"(A) accept grant payments in accordance with the payment schedule established under paragraph (2);

"(B) deposit grant payments into the Fund;

"(C) deposit State moneys into the Fund in an amount greater than or equal to 20 percent of the total amount of all grants made to the State under paragraph (4)(A), on or before the date that each quarterly grant payment is made to the State under paragraph (1);

"(D) provide assistance to projects meeting the requirements of subsection (c)(3) in an amount equal to 120 percent of the amount of each grant payment, within 1 year after receipt of such grant payment;

"(E) expend all funds in the Fund in an expeditious and timely manner;

"(F) construct water supply or wastewater treatment facilities that are eligible to receive financial assistance under subsection (c)(3) and will meet the requirements of applicable Federal and State law, in whole or in part with moneys directly made available by grants under paragraph (1);

"(G) commit or expend each quarterly grant payment that the State shall receive under paragraph (2)(A) in accordance with the laws and procedures of the State that are applicable to the commitment or expenditure of revenues;

"(H) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards in carrying out subsection (d)(5);

"(I) require, as a condition of making a loan or providing other assistance from the Fund, that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards; and

"(J) make annual reports to the Secretary on the actual use of funds in accordance with subsection (d)(4).

"(4) PAYMENTS.—

"(A) IN GENERAL.—Each State that—

"(i) enters into an agreement described in paragraph (3); and

"(ii) demonstrates to the satisfaction of the Secretary that the State will provide from non-Federal sources the State share of the aggregate amount to be expended by the State under the intended use plan of the State, as referred to in subsection (d)(3), for the fiscal year for which the State requests a grant;

shall receive a payment under this section for such fiscal year in an amount equal to the Federal share of the aggregate amount to be expended by the State under such plan for such fiscal year.

"(B) FEDERAL SHARE.—The Federal share for each fiscal year shall be 50 percent.

"(C) STATE SHARE.—The State share equals 100 percent minus the Federal share.

"(D) DISTRIBUTION—The Secretary shall distribute funds made available for grant awards to a State under paragraph (1) according to the percentage of individuals in such State who reside in economically distressed areas as compared to the nationwide percentage of such individuals.

"(E) ALLOTMENT PERIOD.—

"(i) PERIOD OF AVAILABILITY FOR GRANT AWARD.—A grant award to a State under paragraph (1) for a fiscal year shall be available for obligation by the State during the fiscal year for which moneys are authorized and during the following fiscal year.

"(ii) REALLOTMENT OF UNOBLIGATED FUNDS.—The amount of any payment to a State for the Fund of the State, that is not obligated by the State before or on the last day of the 2-year period of availability established by clause (i), shall be immediately reallotted by the Secretary in the basis of the same ratio established under subparagraphs (B) and (C) for the second fiscal year of such 2-year period. None of the moneys reallotted by the Secretary shall be reallotted to a State that has not obligated all

moneys allotted to such State in the first fiscal year of such 2-year period.

"(5) CORRECTIVE ACTION.—

"(A) NOTIFICATION OF NONCOMPLIANCE.—If the Secretary determines that a State has not complied with subsection (c)(5) or any other provision of this section, the Secretary shall notify the State of such noncompliance and specify the necessary corrective action.

"(B) WITHHOLDING OF PAYMENTS.—If a State does not take corrective action within 60 days after the date that the State receives notification of such action under subparagraph (A), the Secretary shall withhold additional payments to such State until the Secretary is satisfied that the State has taken the necessary corrective action.

"(C) REALLOTMENT OF WITHHELD PAYMENTS.—If the Secretary is not satisfied that adequate correction actions have been taken by the State within 12 months after the State is notified of such actions under subparagraph (A), the payments withheld from the State by the Secretary under such subparagraph shall be made available for reallotment in accordance with paragraph (4)(D)(ii).

"(c) ECONOMICALLY DISTRESSED AREA REVOLVING LOAN FUNDS.—

"(1) ESTABLISHMENT.—In order for a State to receive a grant under subsection (b)(1), the State shall establish a Fund that complies with the requirements of this subsection.

"(2) ADMINISTRATION.—The Fund of each State shall be administered by an entity of the State that has the authority to operate the Fund in accordance with the requirements of this subsection.

"(3) PROJECTS ELIGIBLE FOR ASSISTANCE.—The Fund for a State shall be used only to provide financial assistance to a municipality, or an intermunicipal, interstate, or State agency, instrumentality, or supplier of water or wastewater services for the construction of a Federal or State approved publicly-owned water supply or wastewater treatment facility that provides water or wastewater services to an economically distressed area in which—

"(A) such services do not exist; and

"(B) at least 80 percent of the dwellings, in a portion of an economically distressed area that receives water or wastewater services from funds provided under subsection (b)(1), were occupied on June 1, 1989.

"(4) FINANCING OF FUND. —The Fund shall be maintained and credited with repayments of loans made by the Fund. The Fund balance shall be continuously available for providing financial assistance under paragraph (5).

"(5) Use of Fund.—Unless prohibited by State law from providing a particular means of financial assistance under this paragraph, a State may only use a Fund—

"(A) to make a loan, on the condition the—

"(i) the loan is made at or below the market interest rate, including an interest-free loan;

"(ii) annual principal and interest payments shall commence not later than 1 year after completion of any project;

"(iii) the loan shall have a term of repayment not to exceed 40 years;

"(iv) the recipient of the loan shall establish a dedicated source of revenue for payment of the loan; and

"(v) the Fund shall be credited with all payments of principal and interest on the loan;

"(B) to guarantee, or purchase insurance for, a loan obligation if such action would improve credit market access or reduce interest rates;

"(C) as a source of revenue or security for the payment of principal and interest on a revenue or general obligation bond issued by the State, if the proceeds of the sale of the bond will be deposited in the Fund;

"(D) to provide a loan guarantee for a revolving fund that is established by a municipality or intermunicipal agency that is similar to the Fund;

"(E) to earn interest on Fund accounts;

"(F) to provide for the reasonable costs of administering the Fund and conducting activities under this section; and

"(G) to make a grant, on the condition that the amount of the grant may not impair the maintenance of the total Federal and State deposits to the Fund as provided for in subsection (b)(3).

"(d) AUDITS, REPORTS, AND FISCAL CONTROLS; INTENDED USE PLAN.—

"(1) FISCAL CONTROL AND AUDITING PROCEDURES.—Each State that establishes a Fund shall utilize sufficient fiscal controls and accounting procedures to ensure proper accounting during appropriate accounting periods for—

"(A) payments received by the Fund;

"(B) disbursements made by the Fund; and

"(C) Fund balances at the beginning and end of the accounting period.

"(2) ANNUAL FEDERAL AUDITS.—The Secretary shall, at least once each fiscal year, conduct or require each State to independently conduct reviews and audits as may be considered necessary or appropriate by the Secretary to carry out this section. Audits of the use of moneys deposited in the Fund shall be conducted in accordance with the auditing procedures of the General Accounting Office, including the procedures described in chapter 75 of title 31, United States Code.

"(3) INTENDED USE PLAN.—After providing for public comment and review, each State shall prepare a plan each fiscal year that identifies the intended uses of the Fund for such State. Such plan shall include—

"(A) a description of the short- and long-term goals and objectives of the Fund of the State;

"(B) information on the activities to be supported by the Fund, including a description of project categories, terms of financial assistance, and the intended recipients of assistance;

"(C) specific proposals for meeting the requirements of subparagraphs (C) through (F) of subsection (b)(3); and

"(D) the criteria and method established for the distribution of moneys under the Fund.

"(4) ANNUAL REPORT.—Beginning on the first fiscal year after the receipt of payments under subsection (b)(4)(A), a State shall provide an annual report to the Secretary that describes whether, and the manner in which, the State has met the goals for the previous fiscal year as identified in the plan prepared for such year under paragraph (3), including identification of loan receipts, loan amounts, loan terms, and similar details on other forms of financial assistance provided from the Fund.

"(5) ANNUAL FEDERAL OVERSIGHT REVIEW.—The Secretary shall conduct an annual oversight review of each State plan prepared under subsection (d)(3), each State report prepared under paragraph (3), and other such materials as are considered necessary and appropriate in carrying out this section. After reasonable notice by the Secretary to the State or the recipient of a loan from the Fund, the State or loan recipient shall make available to the Secretary such records as the Secretary reasonably requires to review and determine compliance with this section.

"(6) APPLICATION OF PROVISIONS.—If the Secretary terminates a grant provided to a State under subsection (b)(1)—

"(A) such State shall solely conduct the reviews and audits under paragraph (2); and

"(B) the requirements set forth in paragraphs (3) through (5) shall not be applicable to the Secretary or such State.

"(e) AMOUNTS TO BE MADE AVAILABLE.—Notwithstanding any other provision of law, of the amounts made available to carry out section 310B(b) for fiscal years 1990 through 1994, the Secretary shall make available such amounts for each fiscal year to carry out this section.".●

By Mr. MURKOWSKI:

S. 1332. A bill to provide for realignment and major mission changes of medical facilities of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITIES REALIGNMENT ACT

● Mr. MURKOWSKI. Mr. President, I rise today to introduce historic legislation which is needed to improve the efficiency of Department of Veterans Affairs [VA] health care facilities. Today I propose the Department of Veterans Affairs Medical Facilities Realignment Act of 1989. Specifically, this legislation—which is modeled after the Defense Authorization Amendments and Base Closure and Realignment Act—would establish a similar commission to examine VA medical facilities to determine whether realignments, consolidations, or mission changes are needed. Let me be clear, the purpose of this legislation is not to reduce the budget of VA's health care system or to necessarily close VA facilities, but rather to shift available resources where they can most efficiently provide care to the most veterans.

Mr. President, I had intended to introduce this bill before the Memorial Day recess, however I agreed to withhold introduction until Secretary Derwinski could discuss the proposal with veterans' service organizations. I discussed this bill on May 18, 1989 (see CONGRESSIONAL RECORD S5734-S5737).

It is my understanding that the Department of Veterans Affairs will shortly be sending to the Congress a draft hospital realignment bill. Secretary Derwinski has asked that the chairmen and ranking members of the Veterans' Affairs Committees introduce VA's legislation. I have seen a copy of VA's draft legislation and I intend to support it. However, because my bill differs from VA's, I wanted to introduce my bill so that my ideas would be considered by the Congress.

BACKGROUND

Mr. President, the VA health care system is the largest in the Nation. VA's medical care budget is over $10.5 billion annually. Additionally, VA's medical research budget exceeds $200 million and over $400 million is appropriated annually for medical facility construction. VA operates 172 hospitals, 233 outpatient clinics, 119 nursing homes, and 27 domiciliaries, and 194 community-based readjustment counseling centers for Vietnam-era veterans. VA provides hospital care to over 1 million veterans and conducts over 21 million outpatient visits. VA provides health care services to 13 percent of our Nation's veteran population.

The array of services provided by VA is extraordinary. Veterans—except for certain veterans who are required to pay a modest copayment—receive free inpatient treatment, nursing home care, outpatient care, or domiciliary care. The VA also offers specialized community-based contract care programs to address the needs of chronically mentally ill veterans and veterans with alcohol and drug abuse problems. Veterans are not only provided these services but also receive free prescription medications and over-the-counter drugs and supplies and, in some cases, transportation reimbursement for trips made to VA facilities. In other words, veterans who do use the VA system for health care needs receive an extraordinary variety of services.

It is important to note that veterans' access to VA health care services has never been equitable. That is, VA facilities have not been located in every city or community in the United States, and they probably never will be. Therefore, if a veteran's home happens to be geographically close to a VA medical facility, that veteran's access to VA services is very great.

FINANCIAL STATUS OF VA HEALTH CARE SYSTEM

During the summer of 1988, the Committee on Veteran's Affairs—through letters from veterans and VA employees and travel to VA facilities—became aware of funding problems within VA's health care system. As a result of this information, the committee held 2 days of hearings in September 1988 to discuss this funding problem. Officials from VA and representatives—including VA hospital directors, Chiefs of Staff, and Chiefs of Nursing—testified about the poor financial status of their facilities.

This year the committee has held 3 days of hearings on the funding issue. There is no disagreement among committee members that more money is needed if the level of services provided in the past is to be maintained. As a result of the funding situation, certain programs of care to veterans have been restricted or eliminated.

Senators SIMPSON and THURMOND joined with me in sending to the Budget Committee our views on VA's budget for fiscal year 1990. We recommended an increase of over $800 million for VA medical care in fiscal year 1990. This is an increase over the President's request which was $10.7 billion for that year.

Due in large part to the efforts of VA Secretary Ed Derwinski, on March 24, 1989, the President sent forth to Congress a request for fiscal year 1989 supplemental funding of over $300 million for VA medical care. On June 30, 1989, Public Law 101-45 was enacted which provided $340 million in supplemental appropriations for VA.

However, due to severe budget constraints resulting from the Federal budget deficit, it is unlikely that VA will receive all the money it needs to provide all things for all veterans. Simply raising the amount of funding for the VA medical care system is not an easy task.

I should note, however, the overall budget for the VA medical care system continues to grow each year. Because the VA increases the number of veterans who receive care each year, the VA does not have enough funds to continue to serve veterans in the manner in which they once did.

WHY IS THIS LEGISLATION NEEDED

This legislation is needed for a variety of reasons. One happens to be driven by the issue of money. We can no longer afford to operate the VA system as we have in the past. We must closely examine each Government program—including each VA facility—to determine if change is needed. For example, we have four VA hospitals in Chicago. Why is this so? Are all these facilities needed? These are the types of questions that needed to be asked.

Health-care delivery and technology has changed tremendously in the past several decades. The practice of medicine has changed due to advances in medical technology and sometimes as a result of efforts to control the cost of health care. The delivery of care has shifted from a system which relied on inpatient hospitalization to increases in outpatient care.

Additionally, VA will see an increase in veterans age 65 or older in the next 10 years. By the year 2000, over 9 million veterans will fit this over-65 age category. This is an increase of 6 million from 1980. Our seniors tend to move to warmer climates once they retire. This has caused an influx of veterans into the so-called Sun Belt States. Yet these States lack the capacity to meet the demand for health-care services.

VA has experienced difficulties in attempts to modify the size or mission of VA facilities. These efforts are often met with substantial resistance from Members of Congress who represent those districts or States. A VA facility not only represents care and treatment to veterans but plays an important economic role in the community. Frankly, a VA facility means jobs—not only Federal ones but private sector support services as well.

There is no question in my mind that an independent review of the functions and missions of each VA facility is vitally needed. And a mechanism to remove political considerations from discussions of mission changes and consolidations is desperately needed. For these reasons, I believe that this is legislation whose time has come.

SUMMARY OF PROVISIONS

Because this bill is so closely modeled after the DOD base closure legislation, I will not go into detail on the specifics of each provision. I would, however, like to highlight a few specific points.

This bill would require the Secretary of Veterans Affairs to establish a commission to review VA medical facilities to determine if realignments or mission changes are needed. This Commission—which is required to be established within 45 days after enactment—would be comprised of between 9 and 12 members. The Secretary has the complete discretion to name members of the Commission; however, certain expertise is required to be represented. For example, the bill requires representatives of the following organizations to be on the Commission: Department of Defense, Association of American Medical Colleges, VA's Special Medical Advisory Group, Health and Human Services, and veterans' service organizations. Other members should have expertise or experience in management of health service in the private sector, health-care economics, health-care policy, VA medical care, long-term care, and rural health-care services.

This bill would require that the Secretary approve or disapprove—without change—all the recommendations contained in the report which is required to be submitted to the Secretary. There would be no discretion to approve a partial list or modify any recommendations. Basically, it is an "all-or-nothing" proposition. Unless a joint resolution disapproving the recommendations is enacted by Congress within a specified deadline, the Secretary is required to begin implementation efforts within a year after receipt of the report and complete those actions within 3 years.

CONCLUSION

I urge my colleagues to support this very important legislation. I look forward to working with Senator ALAN CRANSTON, and the other committee members, on this issue.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1332

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Department of Veterans Affairs Medical Facilities Realignment Act of 1989".

SEC. 2. REALIGNMENT AND MISSION CHANGES OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL FACILITIES.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall—

(1) within 45 days after the date of the enactment of this Act, issue a charter establishing the Commission provided for in section 4 and containing the terms, conditions, and mandates for its operation to achieve its objectives under this Act, including provision for the appointment of staff and any other support and expenses the Commission considers necessary;

(2) realign all medical facilities recommended for realignment by the Commission in the report to the Secretary of Veterans Affairs pursuant to the charter establishing the Commission;

(3) change the major missions of medical facilities as recommended by the Commission in its report to the Secretary; and

(4) initiate all such realignments and major mission changes not later than one year after receipt of the Commission's report by the Secretary, and complete all such realignments and all actions required for such mission changes not later than three years after receipt of such report by the Secretary.

SEC. 3. CONDITIONS.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs may not carry out any realignment or major mission change of any medical facility under this Act unless—

(A) not later than 15 days after receiving the report referred to in section 2, the Secretary of Veterans Affairs transmits to the Committees on Veterans Affairs of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Veterans Affairs will implement, all of the medical facility realignments and major mission changes recommended by the Commission in that report; and

(B) the Commission has recommended, in the report referred to in section 2, the realignment or major mission change as the case may be, of the medical facility, and has transmitted to the Committees on Veterans Affairs of the Senate and the House of Representatives a copy of the report and the statement required by section 4(d)(2)(B).

(2) The Secretary may not initiate any realignment or major mission change recommended by the Commission in the report referred to in section 2 within 45 days after the committees referred to in paragraph (1) receive the Secretary's report pursuant to such paragraph.

(b) JOINT RESOLUTION.—The Secretary of Veterans Affairs may not carry out any realignments or major mission changes under this Act if, within 45 days after the committees receive the Secretary's report under subsection (a)(1), a joint resolution is enacted, in accordance with the provisions of section 9, disapproving all the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of the 45-day period.

SEC. 4. THE COMMISSION ON MEDICAL FACILITY REALIGNMENT AND MAJOR MISSION CHANGE.

(a) NAME OF COMMISSION.—The Commission established pursuant to the charter issued by the Secretary of Veterans Affairs pursuant to section (2)(a)(1) shall be known as the "Commission on Medical Facility Realignment and Major Mission Change".

(b) MEMBERSHIP.—The Commission shall be appointed by the Secretary of Veterans Affairs and shall consist of not less than 9 and not more than 12 members, as follows:

(1) One member from among persons, if any, nominated by the Association of American Medical Colleges.

(2) One member from among persons knowledgeable about sharing Department of Veterans Affairs and Department of Defense health-care resources who are nominated by the Secretary of Defense.

(3) One member who is a member of the special medical advisory group established pursuant to section 4112(a) of title 38, United States Code.

(4) One member from among persons, if any, nominated by veterans service organizations chartered by Congress.

(5) One member from among persons knowledgeable about the Medicare and Medicaid programs who are nominated by the Secretary of Health and Human Services.

(6) The remaining members from among persons who, by reason of education, training, and experience, are experts in (A) the management of health services in private enterprise, (B) health care economics, (C) health care policy, (D) medical care furnished by the Veterans Health Services and Research Administration, except that no such member may be an employee of the Department of Veterans Affairs, (E) long-term health care services, and (F) rural health care services.

(c) CHAIRMAN AND VICE CHAIRMAN.—The Secretary of Veterans Affairs shall designate a Chairman and Vice Chairman from among the members of the Commission.

(d) DUTIES.—The Commission shall—

(1) transmit the report referred to in section 2(a) to the Secretary within one year after the date of the enactment of this Act and shall include in such report the Commission's recommendations regarding the medical facilities to which functions should be transferred as a result of the realignments and major mission changes recommended by the Commission; and

(2) on the date on which the Commission transmits such report to the Secretary, transmit to the Committees on Veterans Affairs of the Senate and the House of Representatives—

(A) a copy of such report; and

(B) a statement certifying that the Commission has reviewed all medical facilities, including all medical facilities under construction and all those planned for construction, and has identified the medical facilities recommended for realignment or major mission changes.

(e) STAFF AND SUPPORT.—Not more than one-fourth of the professional staff of the Commission shall be individuals who have been employed by the Department of Veterans Affairs within one year before the date of the enactment of this Act.

(f) RECORDS AND MEETINGS.—(1) The records, documents, and other materials prepared by or for the Commission are not subject to section 552 of title 5, United States Code.

(2) Meetings of the Commission are not subject to the provisions of section 10 of the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 5. IMPLEMENTATION.

(a) IN GENERAL.—In realigning or changing the major mission of a medical facility under this Act, the Secretary of Veterans Affairs, subject to the availability of funds, including funds in the Account—

(1) may carry out actions necessary to implement such realignment or major mission change, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such medical facility to another medical facility;

(2) may provide—

(A) economic adjustment assistance to any community located near a medical facility being realigned or whose major mission is to be changed, and

(B) community planning assistance to any community located near a medical facility to which functions will be transferred as a result of such realignment or major mission change,

if the Secretary determines that such assistance is needed and that the financial resources available to the community (by grant or otherwise) for economic adjustment and community planning are inadequate; and

(3) subject to the availability of funds referred to in clause (1), may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Veterans Affairs, with respect to excess and surplus property located at a medical facility realigned under this Act—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484); and

(C) the authority of the Administrator to grant approvals and make determinations under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(2)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations in effect on the date of the enactment of this Act governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations in effect on the date of the enactment of this Act governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary of Veterans Affairs, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

(C) The authority required to be delegated by paragraph (1) to the Secretary of Veterans Affairs by the Administrator of General Services shall not include the authority to prescribe general policies and methods

for utilizing excess property and disposing of surplus property.

(D) Before any action may be taken with respect to the disposal of any surplus real property at a medical facility in connection with a realignment under this Act, the Secretary of Veterans Affairs shall consult with the Governor of the State and heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(E) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) and (4).

(3)(A) Before any action is taken with respect to the disposal or transfer of any real property at a medical facility in connection with a realignment or major mission change under this Act, the Secretary of Veterans Affairs shall notify all other departments, agencies, and instrumentalities (including nonappropriated fund instrumentalities) of the United States Government of the availability of such property, or portion thereof, and may transfer such property or portion, without reimbursement, to any such department, agency, or instrumentality. In carrying out this paragraph, the Secretary shall give a priority, and shall transfer, to any such department, agency, or instrumentality that agrees to pay fair market value for the property or portion. For the purposes of this paragraph, the fair market value shall be the fair market value as of the date of the transmittal to the Secretary of the report referred to in section 2(a).

(B) This paragraph shall take precedence over any other provision of this Act or other provision of law with respect to the disposal or transfer of any real property at a medical facility in connection with a realignment or major mission change under this Act.

(4)(A) Except as provided in subparagraph (B), all proceeds—

(i) from any transfer under paragraph (3), and

(ii) from the transfer or disposal of any other property made as a result of a realignment or major mission change under this Act,

shall be deposited into the Account.

(B) In any case in which the General Services Administration is involved in the management or disposal of such property, the Secretary of Veterans Affairs shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

SEC. 6. WAIVER.

The Secretary of Veterans Affairs may carry out this Act without regard to—

(1) any provision of law restricting the authority of the Secretary or the use of funds for realigning medical facilities or changing the major missions of medical facilities, other than any provision of this Act;

(2) any provision of title 38, United States Code; and

(3) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 7. REPORTS.

As part of each annual budget request for the Department of Veterans Affairs, the Secretary of Veterans Affairs shall transmit to the Committees on Veterans Affairs and Appropriations of the Senate and the House of Representatives—

(1) a schedule of the realignment or major mission change actions to be carried out under this Act in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such realignment or major mission change and of the time period within which such cost savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the medical facilities, including those under construction and those planned for construction, to which functions are to be transferred as a result of such realignments or major mission changes, together with the Secretary's assessment of the environmental effects of such transfers.

SEC. 8. FUNDING.

(a) ESTABLISHMENT OF ACCOUNT.—There is hereby established on the books of the Treasury an account to be known as the "Department of Veterans Affairs Medical Facility Realignment Account" which shall be administered by the Secretary of Veterans Affairs as a single account.

(b) DEPOSITS TO THE ACCOUNT.—There shall be deposited into the Account—

(1) funds appropriated to the Account for fiscal years beginning after the date of the enactment of this Act;

(2) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Veterans Affairs for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the Committees on Veterans Affairs and Appropriations of the Senate and the House of Representatives; and

(3) proceeds described in section 5(b)(4)(A).

(c) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 5(a).

(2) When a decision is made to use funds in the Account to carry out a major medical facility project (as defined in section 5004(a)(3)(A) of title 38, United States Code) under section 5(a)(1) of this Act, the Secretary shall notify in writing the Committees on Veterans Affairs and Appropriations of the Senate and the House of Representatives of the nature of, and justification for, the project and the amount of expenditures for such project.

(d) REPORT.—Not later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this Act, the Secretary shall transmit to the Committees on Veterans Affairs and Appropriations of the Senate and the House of Representatives a report on the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 5(a) during such fiscal year.

(e) FINAL ACCOUNTING AND CERTIFICATION.—When the Secretary completes all actions necessary for the realignments and major mission changes required pursuant to this Act, the Secretary shall—

(1) transmit to the Committees on Veterans Affairs and Appropriations of the Senate and the House of Representatives a report containing an accounting of—

(A) all funds deposited into and expended from the Account or otherwise expended under this Act; and

(B) any amount remaining in the Account; and

(2) transmit to the Secretary of the Treasury a certification that all such actions have been completed.

(f) DISPOSITION OF UNOBLIGATED FUNDS.—Upon receipt of a certification pursuant to subsection (e)(2), the Secretary of the Treasury shall transfer all unobligated funds remaining in the Account to the miscellaneous receipts account in the United States Treasury.

SEC. 9. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT.

(a) TERMS OF THE RESOLUTION.—For purposes of section 3(b), the term "joint resolution" means only a joint resolution—

(1) which is introduced within 45 days after the date on which the committees referred to in section 3(a) receive a report by the Secretary of Veterans Affairs pursuant to section 3(a)(1)(A), and—

(2) which does not have a preamble;

(3) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Commission on Medical Facility Realignment and Major Mission Change established by the Secretary of Veterans Affairs as submitted to the Secretary of Veterans Affairs on _____," the blank space being appropriately filled with the date; and

(4) the title of which is as follows: "A joint resolution disapproving the recommendations of the Commission on Medical Center Realignment and Major Mission Change".

(b) REFERRAL.—A resolution described in subsection (a) introduced in the House of Representatives shall be referred to the Committee on Veterans Affairs of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Veterans Affairs of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) within the 45-day period beginning on the date on which such resolution is introduced, such committee shall be discharged from further consideration of such resolution as of the day after the last day of such period, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 10. DEFINITIONS.

In this Act:

(1) The term "Account" means the Department of Veterans Affairs Medical Facility Realignment Account established by section 8 of this Act.

(2) The term "major mission change" means any substantive change in clinical programs or patterns of delivery of medical care at a medical facility, or part thereof, pursuant to the terms and limitations contained in the charter referred to in section 2(a).

(3) The term "medical facility" means a Department of Veterans Affairs facility referred to in section 601(4)(A) of title 38, United States Code.

(4) The term "realignment" means closure, consolidation, and any other action which both reduces and relocates functions and civilian personnel positions.●

By Mrs. KASSEBAUM (for herself and Mr. DOLE):

S. 1333. A bill to amend the International Air Transportation Competition Act of 1979; to the Committee on Commerce, Science, and Transportation.

INTERNATIONAL AIR TRANSPORTATION COMPETITION ACT AMENDMENTS

Mrs. KASSEBAUM. Mr. President, I am introducing this bill to address an injustice that has developed out of current law. This language would repeal language in the International Air Transportation Competition Act of 1979 pertaining to air carrier service at Dallas Love Field.

The distinguished Republican leader, Senator DOLE, joins me in offering this bill, which is a companion measure to a bill introduced today in the House of Representatives by Congressman DAN GLICKMAN and supported by the entire Kansas House delegation. This bipartisan support reflects a broad recognition of the anticompetitive situation that has developed because of this section of law and indicates a willingness among Kansans to try to resolve the unfairness of this situation.

The longstanding debate over air service to Love Field has addressed the consequences of placing legislative limits on service to and from this airfield. Ten years ago, a section was included in the International Air Transportation Competition Act to prohibit commercial air carriers from providing service between Dallas Love Field and points located outside of Texas or its four surrounding States. This effectively limits travel into and out of this airfield to only destinations in Texas, Louisiana, Oklahoma, Arkansas, and New Mexico.

Air carriers originating from all other States, must fly into the Dallas-Forth Worth airport in order to have access to the highly traveled Dallas area. This restriction applies as well to any carrier that provides connecting service within one of the four contiguous States to an aircraft that originated in any other State. Two separate, one-way tickets are required for such connecting flights if they want to land at Love Field. Clearly, the restrictions have made it prohibitive to land at this airfield.

Upon close examination, it is evident that this has led to higher air fares for some segments of the United States and lower air fares for others, regardless of the distance traveled and the populations served. For example, the cost to travel round-trip from Wichita, KS, to Dallas on Delta or American Airlines is $520 for an unrestricted ticket. The same round-trip ticket from New Orleans, which is 88 miles further away from Dallas, is only $138 weekdays, and $164 weekends. This is just one example of the degree of control that major air carriers currently have over air fares from points originating outside of the restricted zone.

Kansas is not alone in this problem. Fare discrepancies similar to the above exist in many of the markets where major carriers serve Dallas, but where Southwest does not. This leaves States just beyond the borders of the Texas-contiguous States, such as Colorado, Missouri, Tennessee, and Mississippi, which, like Kansas, could be subject to higher fares to Dallas than their neighbors even though the distance traveled is less. Such unfairness, Mr. President, cannot be allowed to continue.

Southwest Airlines is currently the only commercial air carrier providing jet service to Love Field. Since Southwest can not provide direct service to any point beyond the four contiguous States, American and Delta have little reason to reduce their fares to other outside destinations. The fact that fares to Dallas on American and Delta are so low for those points which Southwest serves speaks to the need for removing the 10-year-old restriction on Love Field.

To allow this situation to continue would be to condone anticompetitive law and to encourage discrimination against many for the benefit of a few. In this time of deregulation, I believe it is essential to encourage competition within the transportation community in order to protect the interests of the traveling public. The case with Love Field is no different than that of all the other small airfields across the country, none of which are restricted based on their location. Love Field has been subject to this unique statute for the last 10 years, and it is time to close this loophole.

It is important to add that Southwest Airlines is buying a new, quieter generation of aircraft, so the noise problems associated with large aircraft should be somewhat less at Love Field in the future than at many other airports in the country.

Mr. President, it is time to take a positive step to further the benefits of deregulation. I urge my colleagues to support this effort in order to eliminate this special-interest section of law.

Mr. DOLE. Mr. President, today I join my distinguished colleague NANCY KASSEBAUM as an original cosponsor of legislation that will correct a provision of the International Air Transportation Competition Act and restore what Congress meant when it passed the Airline Deregulation Act of 1978.

Today air travelers from Kansas are at a distinct disadvantage when it comes to competitive air fares to and from Dallas, TX. Southwest Airlines, a low cost carrier, is prohibited by law from traveling to and from Love Field except through the four States contiguous to Texas' borders. Direct service is permitted from Dallas to New Orleans, for instance, but not to Wichita which is closer to Dallas than New Orleans.

In addition, Mr. President, a traveler from Wichita cannot purchase a connecting or through ticket to Dallas Love Field on Southwest Airlines. In order to travel there now, a Wichita traveler must get off the plane, say in Tulsa, OK, purchase a new ticket to Dallas and get back on another plane—all at an incredible cost and a terrific inconvenience. I also understand that joint ticketing is prohibited with other air carriers.

This all translates into an extremely anticompetitive situation. Air fares between Dallas and Wichita are several hundred dollars above what they are in those markets where Southwest Airlines competes with other airlines. Congress did not intend that there be islands of noncompetition when it passed the Airline Deregulation Act of 1978. There is a ready and willing market in and around Wichita for competitive air service. It is time that this unreasonable and arbitrary barrier be removed.

By Mr. BENTSEN:

S. 1335. A bill to temporarily suspend the duty on certain furniture and seats; to the Committee on Finance.

TEMPORARY DUTY SUSPENSION ON CERTAIN FURNITURE AND SEATS

● Mr. BENTSEN. Mr. President, today I introduce a bill to suspend temporarily the import duties on rattan, wicker, and buri furniture and furniture parts. This bill is substantially similar to a bill I introduced last session and is identical to H.R. 1184, which was introduced in the House this session by Mr. ANDREWS.

In 1988, $201.7 million in rattan, wicker, and buri furniture and furniture parts was imported into the United States. Although the current rate of duty on importation of these products from nations with most-favored-nation status is 7.5 percent, until recently much of these products were imported duty-free because they were exported primarily from developing countries qualifying for duty-free treatment under the generalized system of preferences. However, GSP benefits for rattan, wicker, and buri furniture and furniture parts imported from Taiwan, one of the primary exporters, terminated in 1987, and GSP benefits for such products exported from Hong Kong terminate this year. Thus, unless this bill is enacted and duties are temporarily suspended, U.S. importers and sellers of these products will continue to face a significant increase in their costs.

There appears to be no significant U.S. production of furniture that would compete with the products covered by this bill. Thus, the suspension should have no adverse impact on domestic industry, and duty suspension is warranted.

In sum, Mr. President, I believe that this legislation is needed and noncontroversial, and I urge my colleagues to support it. I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1335

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CERTAIN FURNITURE AND SEATS.

Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007) is amended by inserting in numerical sequence the following new heading:

"9902.90.95	Furniture, seats, and parts thereof, of cane, osier, bamboo or other similar materials, including rattan (provided for in subheading 9401.50.00, 9401.90.25, 9403.80.30, or 9403.90.25)	Free	No change	No change On or before 12/31/92".

SEC. 2. EFFECTIVE DATE.

The amendment made by this Act shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 15 days after the date of enactment of this Act.●

By Mr. GRAHAM (for himself and Mr. MACK):

S. 1336. A bill to provide for the use and distribution of funds awarded the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission; to the Committee on Indian Affairs.

FLORIDA SEMINOLE INDIAN ACT OF 1989

● Mr. GRAHAM. Mr. President, today Senator MACK and I are introducing legislation on behalf of the Seminole Indians of Florida with respect to a dispute that has arisen between the Seminole Tribe of Florida and the Oklahoma Seminole Nation.

In the early 19th century, the Federal Government relocated the Seminoles from Florida to Oklahoma; however, an undetermined number of Seminoles fled to the Everglades during the relocation effort. The descendants of these two groups today make up the Florida and Oklahoma Seminoles.

The dispute between the two groups concerns the allocation of funds awarded in 1976 by the Indians Claims Commission for land taken by the Federal Government in 1823. The Commission awarded a $15 million judgment to the Seminole Nation as it existed in Florida on September 18, 1823. With accumulated interest, the award now totals $45 million and is being held in trust pending settlement of this dispute.

The Oklahoma delegation to Congress has introduced legislation strongly favoring the Oklahoma Seminoles by awarding them 75 percent of the judgment. However, this proposal is based on inadequate population data and ignores the fact that the Oklahoma tribe has already received substantial compensation in treaty negotiations, land awards, and health, education, and social service benefits that the Florida tribe never received.

Mr. President, Senator MACK and I believe that the legislation we are introducing today, the Florida Seminole Indian Act of 1989, will provide a more equitable division of the judgment. While it is still possible that this dispute can be resolved administratively by the Bureau of Indian Affairs, we are prepared to pursue a legislative solution to ensure the fair treatment of the Seminole Tribe of Florida.

Mr. President I ask unanimous consent that the text of the bill be printed in the RECORD at this time.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1336

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Florida Seminole Indian Act of 1989".

SEC. 2. Notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of judgments awarded to the Seminole Indians in dockets 73, 151, and 73-A of the Indian Claims Commission shall be used and distributed as provided in this Act.

SEC. 3 (a) The funds appropriated with respect to the judgments awarded the Seminole Indians in Dockets 73 and 151 of the Indian Claims Commission (less attorney fees and litigation expenses previously paid), including all interest and investment income accrued thereon, are allocated as follows:

(1) 50 percent of such funds shall be allocated among the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida in accordance with subsection (b), and

(2) 50 percent of such funds are allocated to the Seminole Nation of Oklahoma.

(b)(1) The funds that are required under subsection (a)(1) to be allocated among the Seminole Tribe of Florida, the Miccouskee Tribe of Indians of Florida, and the inde-

pendent Seminole Indians of Florida and all of the funds appropriated with respect to the judgment awarded the Seminole Indians in Docket 73-A (less attorney fees and litigation expenses previously paid), including all interest and investment income accrued thereon, are allocated as follows:

(A) the Seminole Tribe of Florida, 77.20 percent;

(B) the Miccosukee Tribe of Indians of Florida, 18.16 percent; and

(C) the independent Seminole Indians of Florida (as a group), 4.64 percent.

SEC. 4. The funds allocated to each Indian tribe or group under section 3 are hereby declared to be held in trust by the United States for the benefit of such Indian tribe or group.

SEC. 5. (a) A plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma under section 3(a) of this Act may be prepared by the governing body of the Seminole Nation of Oklahoma in consultation with the Secretary of the Interior within the 180-day period beginning on the date of enactment of this Act. The Secretary shall, upon completion of such a plan, submit the plan to the Congress, together with recommendations regarding approval of the plan and the reasons for such recommendations.

(b) If, by the close of the 180-day period described in paragraph (1), a plan has not been prepared by the Seminole Nation of Oklahoma as provided in paragraph (1), the Secretary, in consultation with the Seminole Nation of Oklahoma, shall prepare and submit a plan for the use and distribution of the funds allocated to the Seminole Nation of Oklahoma under section 3(a) to the Congress for approval by no later than the date that is 180 days after the close of the 180-day period described in paragraph (1). A copy of the plan prepared by the Secretary under this paragraph shall be furnished to the Seminole Nation of Oklahoma at the time the plan is submitted to the Congress.

(c) Any plan for the investment, use, or distribution of any funds allocated that is prepared under this section shall account for common needs, educational requirements, and other long-term economic and social interests of the tribe. In consultations undertaken in the formulation of plans under this section, the Secretary shall encourage use of funds for economic development purposes, when appropriate.

SEC. 6. (a) Investment decisions made by the Seminole Nation under a plan established under section 5 shall be subject to the approval of the Secretary. Such approval shall be granted unless the Secretary determines, and notifies the Seminole Nation in writing, that the investment would not be reasonable or prudent or would otherwise not be in accord with the provisions of this Act.

(b) Neither the United States nor the Secretary shall be liable for any losses in connection with any investment decision that is approved by the Secretary under subsection (a).

SEC. 7. The Secretary shall pay the governing body of the Seminole Tribe of Florida such portion of the amount held in trust for that tribe under section 3 of this Act to be allocated or invested as the tribal governing body determines to be in the economic or social interest of the tribe within 60 days after submission of an appropriate resolution by the tribal governing body.

SEC. 8. Notwithstanding any other provision of this Act, no plan for the use and distribution of the share of the funds allocated to the Miccosukee Tribe of Indians of Florida shall be prepared or implemented and no funds allocated to the Miccosukee Tribe of Indians of Florida shall be distributed to the tribe, its members, or any other person unless such plan or distribution is duly authorized by the General Council of the Miccosukee Tribe or by a referendum vote of the members of the tribe duly called by the General Council of the tribe at which a negative vote is permitted. Such funds (and the interest therefrom) shall be held in trust by the United States and invested as provided in the Act of June 24, 1938 (52 Stat. 1037) as amended (25 U.S.C. 162a), except that part or all of the amount may from time to time be paid to the governing body of the Miccosukee Tribe of Indians of Florida as may be authorized under this section.

SEC. 9. (a) The Secretary shall invest the funds allocated to the independent Seminole Indians of Florida (as a group) under section 3 in accordance with subsection (a) of the first section of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a) until the date on which the funds are distributed under subsection (c) or as may be otherwise provided for under subsection (d).

(b)(1) Under regulations prescribed by the Secretary, the Secretary shall compile a roll of those independent individuals of Seminole Indian lineal descent who—

(A) were born on or before, and are living on, the date of enactment of this Act,

(B) are listed on or are lineal descendants of persons listed on the annotated Seminole Agency Census of 1957 as independent Seminoles, and

(C) are not members of an Indian tribe recognized by the Secretary on the most recent list of such Indian tribes published in the Federal Register.

(2) All determinations in the preparation of the roll under paragraph (1) of this subsection shall be based on timely applications for inclusion on the roll supported by evidence satisfactory to the Secretary.

(c) As soon as practicable after the roll required under subsection (b) has been compiled, the funds allocated to the independent Seminole Indians of Florida (as a group) under section 3, including all interest and investment income accrued thereon to the date of payment, except as provided for in subsection (d), shall be distributed on a per capita basis, in payments as equal as possible, to all independent Seminole Indians of Florida enrolled under subsection (b) who make timely application to the Secretary.

(d) In the event of Federal recognition of the independent Seminole Indians of Florida as a Tribe, band, or organization prior to the per capita distribution required by subsection (c), the governing body may request that their funds be retained or disbursed in a similar manner as the Miccosukee Tribe of Indians of Florida for use in supporting tribal governmental programs.

(e) Any person otherwise eligible for a per capita payment except for membership in the Seminole Tribe of Florida or the Miccosukee Tribe of Indians of Florida subsequent to the Seminole Agency Census of 1957 shall have the option to relinquish their membership in favor of the per capita payment or subject to the approval of the tribe, retain their membership by authorizing their per capita share to be paid to the account of the respective tribe.

(f) Acceptance of a per capita share shall not be construed as extinguishing any individual right, title, interest, or claim to lands or natural resources in the State based on use or occupancy or acquired under Federal or State law by any individual Indian which is not derived from or through the tribes, their predecessors, or some other American Indian tribe.

SEC. 10. None of the funds held in trust by the United States under this Act (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds made available under this Act for programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal program or Federally assisted program.●

By Mr. GRAHAM:

S. 1337. A bill to establish a Mildred and Claude Pepper Scholarship Program; to the Committee on Labor and Human Resources.

MILDRED AND CLAUDE PEPPER SCHOLARSHIP PROGRAM

● Mr. GRAHAM. Mr. President, today I am introducing the Mildred and Claude Pepper Scholarship Act which authorizes a $500,000 program of scholarships to secondary school students to participate in civic education programs here in the Nation's Capital.

This new scholarship program was very important to our friend and colleague, the late Congressman Claude Pepper. It was his desire that the scholarships be awarded to the hearing impaired and other disadvantaged or disabled secondary students, and that the program be administered by the Washington Workshops Foundation. Senator Pepper personally contacted Members of the House and Senate last year to ask for an authorization for the program to be named after his wife, Mildred.

Senator Pepper was instrumental in founding the Washington Workshops Congressional Seminar in 1968. The Congressional Seminar Program is the oldest such program on Capitol Hill and has been responsible for bringing over 30,000 high school students to Washington to learn about and participate in Government. Since that time, the Washington Workshops has established a Congressional Internship Program as well as a Diplomacy seminar. Pepper scholarship recipients would be eligible to participate in each of these programs.

These programs offer an invaluable and unique opportunity for citizenship education for our Nation's young people. The Pepper Scholarship Program would extend this opportunity to the handicapped student who would not otherwise be able to participate through his or her own means.

I am pleased to join with Congressmen PAT WILLIAMS and JOE MOAKLEY who have sponsored identical legislation in the House, H.R. 2666. On July

12, their bill was unanimously reported from the Postsecondary Education Subcommittee of the House Education and Labor Committee. It is my hope that the Senate Labor and Human Resources Committee will act expeditiously and that the full Senate will have the opportunity to consider this proposal in the near future.

Before his passing, Senator Pepper had worked diligently to authorize and fund this program. It is fitting that we honor his memory by ensuring that his request is fulfilled this year. I believe the Mildred and Claude Pepper Scholarship Program will serve as a lasting tribute to him and the ideals he championed throughout his lifetime of public service. I strongly urge my colleagues to lend their support to this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1337

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mildred and Claude Pepper Scholarship Act".

SEC. 2. PROGRAM AUTHORITY.

From the sums appropriated pursuant to section 3, the Secretary of Education is authorized to make grants to the Washington Workshops Foundation for the purpose of establishing and maintaining the Mildred and Claude Pepper Scholarship Program.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act, $500,000 for fiscal year 1990, and such sums as may be necessary for fiscal years 1991 and 1992.●

ADDITIONAL COSPONSORS

S. 82

At the request of Mr. THURMOND, the names of the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Kansas [Mr. DOLE], the Senator from Arizona [Mr. DECONCINI], the Senator from Nebraska [Mr. EXON], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 82, a bill to recognize the organization known as the 82d Airborne Division Association, Incorporated.

S. 137

At the request of Mr. BOREN, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 137, a bill to amend the Federal Election Campaign Act of 1971 to provide for a voluntary system of spending limits and partial public financing of Senate general election campaigns, to limit contributions by multicandidate political committees and for other purposes.

S. 478

At the request of Mr. DODD, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 478, a bill to provide Federal assistance to the National Board for Professional Teaching Standards.

S. 727

At the request of Mr. HEFLIN, the names of the Senator from Alaska [Mr. MURKOWSKI] and the Senator from Montana [Mr. BURNS] were added as cosponsors of S. 727, a bill to amend the Animal Welfare Act to provide protection to animal research facilities from illegal acts.

S. 779

At the request of Mr. COCHRAN, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 779, a bill to minimize the impact of agricultural nitrogen on ground water and surface water quality by establishing a nationwide educational program aimed at American farmers, to urge the adoption of agricultural best management practices, and for other purposes.

S. 933

At the request of Mr. HARKIN, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 933, a bill to establish a clear and comprehensive prohibition of discrimination on the basis of disability.

S. 963

At the request of Mr. DOMENICI, the name of the Senator from New Jersey [Mr. BRADLEY] was added as a cosponsor of S. 963, a bill to authorize a study on methods to commemorate the nationally significant highway known as Route 66, and for other purposes.

S. 973

At the request of Mr. LUGAR, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 973, a bill to create a Rural Capital Access Program within the Department of Agriculture to encourage lending institutions to provide loans to certain businesses, and for other purposes.

S. 975

At the request of Mr. METZENBAUM, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 975, a bill to amend the Job Training Partnership Act to encourage a broader range of training and job placement for women, and for other purposes.

S. 1126

At the request of Mr. BUMPERS, the names of the Senator from Vermont [Mr. LEAHY] and the Senator from New Hampshire [Mr. RUDMAN] were added as cosponsors of S. 1126, a bill to provide for the disposition of hardrock minerals on Federal lands, and for other purposes.

S. 1173

At the request of Mr. CHAFEE, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1173, a bill to amend the Internal Revenue Code of 1986 with respect to the allocation of research and experimental expenditures.

S. 1199

At the request of Mr. CHAFEE, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 1199, a bill to amend the Social Security Act to improve Medicare and Medicaid payment levels to community health clinics.

S. 1227

At the request of Mr. BINGAMAN, the names of the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Delaware [Mr. BIDEN], the Senator from Massachusetts [Mr. KERRY], and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 1227, a bill to amend the Arms Control Act and the Export Administration Act of 1979 to restrict proliferation of missiles and missile equipment and technology.

S. 1232

At the request of Mr. DOMENICI, the name of the Senator from Pennsylvania [Mr. HEINZ] was added as a cosponsor of S. 1232, a bill to honor the world's most recent heros in the universal struggle for freedom and democracy, and to designate the park in the District of Columbia directly across from the Embassy of the People's Republic of China as "Tiananmen Square Park."

S. 1299

At the request of Mr. SPECTER, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1299, a bill to establish a Police Corps program.

SENATE JOINT RESOLUTION 164

At the request of Mr. NICKLES, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Joint Resolution 164, a joint resolution designating 1990 as the "International Year of Bible Reading."

SENATE JOINT RESOLUTION 171

At the request of Mr. GRASSLEY, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of Senate Joint Resolution 171, a joint resolution proposing an amendment to the Constitution of the United States relative to the display and care of the flag of the United States of America.

SENATE CONCURRENT RESOLUTION 52

At the request of Mr. HATFIELD, the names of the Senator from California [Mr. WILSON] and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Concurrent Resolution 52, a concurrent resolution to express the sense of the Congress that science, mathematics and technology education should be a national priority.

AMENDMENT NO. 268

At the request of Mr. MOYNIHAN, the names of the Senator from Rhode Island [Mr. PELL] and the Senator from Maryland [Mr. SARBANES] were added as cosponsors of amendment No. 268 proposed to S. 1160, an original bill to authorize appropriations for fiscal year 1990 for the Department of State, the U.S. Information Agency, the Board for International Broadcasting, and for other purposes.

SENATE RESOLUTION 154—RELATING TO THE "KOREAN FIGHTER PROGRAM"

Mr. HEINZ (for himself, Mr. DIXON, Mr. BYRD, Mr. D'AMATO, Mr. FORD, Mr. BOREN, and Mr. HELMS) submitted the following resolution, which was referred to the Committee on Foreign Relations:

S. RES. 154

Whereas the United States has a large trade deficit with the Republic of Korea, more than $10 billion in 1988;

Whereas the Government of the Republic of Korea has pledged to do its utmost to take appropriate measures to open its markets to United States industries in an effort to reduce its trade surplus with the United States;

Whereas the agreement to co-produce the "Korea Fighter Program" (KFP) requires the United States firm awarded the contract by the Government of the Republic of Korea to "offset" over an extended period of time 60 to 70 percent of $2.5 billion value of the contract in Korean aerospace products, amounting to approximately $1.8 billion, or nearly one-fifth of the 1988 United States trade deficit with the Republic of Korea;

Whereas the Government of the Republic of Korea has admitted that its intent in entering into the co-production of the "Korean Fighter Program" is not simply related to national security considerations, but also includes acquiring United States aerospace technology in order to develop an indigenous aerospace capability;

Whereas the "Korean Fighter Program's" impact on the United States industrial base is not known; and

Whereas the United States Government's interagency coordinating and negotiating process has once again failed to take into consideration United States economic security concerns: Now, therefore, be it

Resolved, That the Senate strongly objects to—

(1) the inclusion of offset provisions in the government-to-government memorandum of understanding governing the proposed coproduction by the United States and the Republic of Korea of the "Korea Fighter Program";

(2) the transfer to the Republic of Korea's commercial aerospace industry of United States aerospace technology and applied technology derived from the "Korea Fighter Program"; and

(3) the failure of the Executive branch to adhere to sections 824 and 825 of the National Defense Authorization Act, Fiscal 1989 (Public Law 100-456 September 29, 1988), relating to coordination of the negotiation of defense memoranda of understanding.

(c) It is the sense of the Senate that the President should instruct the Secretary of Defense to postpone the signing of the government-to-government memorandum of understanding regarding the Korean Fighter Program until—

(1) a thorough review of the "Korean Fighter Program" is conducted by the Comptroller General of the United States in consultation with appropriate officials pursuant to sections 824 and 825 of the National Defense Authorization Act for Fiscal Year 1989 (Public Law 100-456); and

(2) a report is submitted within 60 days of source selection by the Republic of Korea to the chairmen of the Committees on Foreign Relations and Armed Services assessing—

(A) any negative or positive affects of the "Korean Fighter Program" on the United States industrial base in light of the Republic of Korea's publicly stated objective to utilize the Program to develop an indigenous commercial aerospace industry;

(B) any negative or positive affects of the "offset" provisions of the proposed "Korean Fighter Program" on the United States trade deficit with the Republic of Korea and its detrimental affects on U.S. or third country suppliers; and

(C) the extent of implementation of the United States Government's interagency coordinating and consulting process as called for in sections 824 and 825 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456), and any negative or positive aspects thereof.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. HEINZ. Mr. President, I take the time of the Senate today in the hope of forestalling a repeat of the FSX-like controversy. In this regard, I am reminded what the great philosopher George Santayana said, "Those who cannot remember the past are condemned to repeat it." I have often misquoted it by saying those who do not profit from the lessons of history are condemned to relive it. They wrote the real words in the life of reason and I hope for the life of me that reason prevails in this particular case.

A little over a month ago, on June 8, Senator DIXON of Illinois first raised the specter of the U.S. Government entering into an agreement with the Government of Korea to coproduce some 120 upgraded either F-16's or F-18's. At that time, Senator DIXON spoke very eloquently reminding us of the mistakes that were being made on another controversial deal and that was, of course, the United States-Japan agreement to codevelop the FSX. He reminded us that unlike the FSX deal which was presented to the Senate as a foregone conclusion, a memorandum of understanding had been signed back in November of last year by the outgoing Reagan administration; there is, as yet, no signed agreement regarding the United States and Korea fighter program. I have called this program son of FSX as a shorthanded way of referring to it.

My own investigation since June 8 has revealed the outlines of a deal which in its own way may not be, insofar as we know, in the best interest of the United States and because a delegation from the South Korean Ministry of Defense is scheduled to meet with Secretary Cheney today, Monday the 17, to continue negotiations on an MOU, a memorandum of understanding, the purpose of which is to get an agreement on the whereases of coproducing this new fighter aircraft. Frankly, it is that meeting here today and this week that propels me with a sense of urgency and compels me to take action.

Let me begin with a description, insofar as we know any of the details of the proposed agreement.

The Korean fighter program, or KFP, began about 5 years ago with a search for follow-on aircraft to supplement Korea's F-16's. The Koreans narrowed their search to three U.S. fighters: General Dynamics' F-16, McDonnell Douglas' F-18 and Northrop's F-20 and the first two, the F-16 and F-18, were chosen for the runoff.

This decision was a direct result of the Blue House. That is South Korea's equivalent of our White House, Mr. President, it was their decision in late 1970's to create an indigenous aerospace manufacturing industry.

Korean officials have never left any doubts about their intentions regarding the Korean fighter program as an essential building block in their long-term strategy of developing this indigenous aerospace manufacturing industry.

And on the Korean side Samsung, the company that drove the United States out of the microwave oven market, as was noted earlier by Senator DIXON, was selected by the Korean Blue House to jump start Korea's indigenous aerospace industry.

In the years since the decision, Korea has gained invaluable experience by building parts of the F-16, for example, the wet center fuselage section, doing piecework for the Boeing 747, and assembling the McDonnell Douglas MD-500 and F-5, so they are not without some experience.

The Department of Defense originally and quite rightly urged the Koreans to buy a fighter off the shelf but they were rebuffed. The Koreans made it clear that in spite of the fact that we run a $10 billion trade deficit with Korea, in spite of the fact that we have many military stationed there aiding them in their defense, they had made a commitment to develop this indigenous aerospace industry of their own and that anything short of fulfilling that commitment was simply nonnegotiable. So, reminiscent of the FSX, our negotiators caved in. They caved in to Korean demands to develop a hands-on experience in producing these aircraft, and indeed our negotiators concluded, and I quote from offi-

cial DOD briefing materials, that "bending metal was not a problem for the Koreans." All that was required to give the Korean aerospace industry its aerospace technological capability was "management techniques and setting up an aircraft procurement system." Very simple.

The DOD negotiators succeeded, thankfully, in refusing Korea's demands for DOD to "buy back" the upgraded jet fighter, that is to say, Mr. President, the original Korean demand was that we teach the Koreans how to produce these fighters and then we have to buy-any amount at least equal to any benefits that might accrue, and we have to displace, by purchasing those finished fighters, our own manufacturers from whom we might otherwise buy.

That, as I say thankfully was avoided. But our negotiators, on the other hand, did not succeed in turning back Korean demands for a so-called offset provision, a policy that I will return to in a moment. An offset, however, is, while not a buyback, very similar to it.

The agreement that is under discussion—and I suppose negotiation—is this: that the U.S. Government is prepared to agree to a package that would total 120 new fighter aircraft. First, there would be manufactured in the United States by a U.S. firm some 12 finished aircraft, and the purpose of that is for DOD to teach the Koreans how to buy the aircraft, what to look for, and so forth, so that the Koreans have the know how to set up an aircraft procurement system. That is one of the things they do not really understand, but it is critical both to being good purchasers as well as being a good producer and seller.

Second, there would be provision from the United States firm selected of some 36 FMS kits for co-assembly, that is, in Korea, and then finally there would be some 72 aircraft licensed for coproduction in Korea, and there would be assistance by the United States firm selected in providing necessary technology, the know-how for the Koreans to build in Korea 72 aircraft.

The U.S. firm awarded the contract will receive between $1.8 billion, according to Department of Defense sources, and $3 billion according to industry sources, and that sounds like a very attractive deal. Obviously, all things being equal, we would not mind selling either $1.8 billion or $3 billion of goods and services to the Koreans as long as it did not prejudice the long run competitiveness of the aerospace industry in this country.

I will have more to say about that issue in a minute, but the firm awarded the contract must also agree to offset the amounts that I just mentioned by purchasing a comparable total in Korean products, most likely spare parts for aircraft in the winning firm's inventory.

According to Mr. Chung Tae Seung, who is the Director of the Ministry of Trade Industry's defense industry division, the Korean fighter program has two missions. One is national defense. That is understandable. And the other, according to him, is to make South Korea an aerospace, and I quote, "manufacturing center of the world."

Mr. President, I cannot quarrel with the honesty and directness of Mr. Chung Tae Seung. He lays it all out and we ought to listen as carefully as he has laid it out.

Other Korean Government officials, Mr. President, also boast that South Korea will have an aerospace industry that is world-class competitive in 10 years, according to a June 7 Wall Street Journal article. And whether that boast is realistic or not is not the issue and I do not choose to debate it here. The issue is the stated intention to use this program, the Korean fighter program, and its technological know-how as a springboard to develop an indigenous aerospace capability.

My view is that if the Koreans want to develop an aerospace industry, fine. If they can do it, that is their business. They are a free country. They have every right to compete in that industry. But we should not feel obligated to help them do it. Indeed, it is our fear that if this deal goes ahead, we will be part and parcel of helping them achieve their stated intent.

By the way, the Korean Government has said that the contract that they award will be awarded to the firm that fulfills both of those requirements, the national defense requirement and the requirement to help make their aerospace industry the manufacturing center of the world.

The Wall Street Journal also claims that United States firms are competing first for the right to teach the Koreans how to compete with them.

Mr. President, if the Wall Street Journal is correct, the attitude of U.S. firms is difficult to understand. In the February 1989 issue of the aerospace newsletter Facts and Perspective, the aerospace industry warns that cuts in research and development government funding "could hurt U.S. aerospace firms as they fight to maintain market share against a growing number of technically capable foreign competitors."

Mr. President, compared to the United States at this moment, South Korea may not yet be a technically capable foreign competitor, but it is precisely this attitude that the United States took toward VCR's, television sets, semiconductors, and microwave ovens, to mention a few, where we no longer have any production capacity worth mentioning. This industry is among the last technology frontiers in which the United States still has a significant, even commanding lead.

United States aerospace officials are concerned only about competition from Europe. Regarding Korea, and for that matter Japan, United States aerospace officials seem to see short-term benefits of cooperating with them, one more project to keep the production lines operating in the United States a little longer or perhaps from the Defense Department point of view, a slightly lower DOD per unit procurement cost.

I would suggest to the U.S. aerospace CEO's that they consult with their counterparts in what is left of the U.S. electronics industry sector. Last week the Washington Post carried an article with the headline "High Tech Firms Rethinking Foreign Ties: U.S. Companies Worry That Partners May Become Competitors Later."

Intel Corp., subject of the article, said that its deal to manufacture microprocessor chips with a Japanese company "was good for Intel but bad for the national interest."

Mr. President, that is some admission.

Another CEO said, "The United States is becoming a public service organization for worldwide industries: we innovate but others copy and capture the market.

In this regard, I am also troubled by DOD's argument to support its decision to coproduce the fighter. DOD does not believe that Korea will ever become a competitor because Jane's devotes a mere half-page to Korea's aerospace industry, 8 pages to Japan's, and over 200 to the United States aerospace industry.

Apparently, DOD is interested only in keeping the military cooperation program going as it did with the FSX, without regard to either trade or technology loss considerations as it did with the FSX. Quite frankly, the logic behind this reasoning dumfounds me. It would undoubtedly dumfound Santayana.

This lie of reasoning neglects measuring the commitment Korea has made to develop an aerospace industry, which is a critical thing. We have that $10 billion trade deficit with Korea. And in addition neither DOD nor for that matter Jane's has factored in national pride, a not intangible asset that we run into with more and more Asian developing countries who have committed themselves to modernize their economies and their societies.

Mr. President, let me just make one other comment regarding the trade surplus issue. In 1989 South Korea in spite of its $10 billion surplus was not targeted under super 301 based on commitments its Government made to open its markets to the United States as well to find areas for reducing the

trade imbalance. Clearly, neither our bilateral trade balance nor the competitive position of our aerospace industry can justify this deal and the offset connected to it.

Accordingly, I am submitting today along with Senator DIXON from Illinois and several other cosponsors a resolution calling on the President not to sign any agreement with Korea until the General Accounting Office has had time to do the following:

First, to review the proposed deal for its impact on the United States industrial base and the United States aerospace industry; second, to assess the impact of the offset clauses on the United States trade deficit with Korea and on suppliers in this country and on third countries; third, to assess the extent to which sections 824 and 825 of the Defense Authorization Act of 1988 have been implemented regarding these defense memorandums and MOU's, and the positive and negative aspects of their implementation.

Mr. President, with the imminent arrival of the Korean delegation for negotiations, time is of the essence, and I urge my colleagues to support this resolution.

I might add, Mr. President, that Senator DIXON and I are considering the possibility of offering this resolution as an amendment to the State Department authorization which is before this body.

With those remarks in mind, I will be sending the resolution to the desk and asking for its appropriate referral.

The PRESIDING OFFICER. Without objection, the resolution will be appropriately referred.

The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, will the Senator from Pennsylvania add the Senator from North Carolina as a cosponsor of the resolution?

Mr. HEINZ. Mr. President, I would be very pleased to add the distinguished Senator from North Carolina.

Mr. HELMS. Mr. President, I commend the distinguished Senators from Pennsylvania and Illinois respectively. I agree with them wholeheartedly. This KFP deal as objectionable for at least three reasons. First, our friends in Korea are demanding that whatever United States firm may finally get the contract, we must buy a comparable amount of spare parts from the Koreans. This seems to me as objectionable not only because it would deprive American workers of jobs, but also because it would make the United States reliant on a foreign nation for the upkeep of our Air Force.

The second problem, as I see it, is that again, the Department of Defense has not even bothered to contact other Departments: Commerce and the USTR come to mind, as examples, as to the effects of such a deal as required by law. The Senators may remember this was one of the major problems with the FSX deal.

The third problem, as I see it, is once again the Koreans have said they are planning to use whatever they learn from the KFP Program in order to develop a civilian aerospace industry. Once again, the parallel of the FSX is entirely obvious.

I hope the administration has learned some lessons from the FSX fiasco, and that it will work with Congress in the consideration of the KFP deal with Korea.

Mr. DIXON. Mr. President, Senator HEINZ and I, together with a number of our colleagues, are today submitting a resolution urging the administration to postpone signing a memorandum of understanding on the Korean fighter program until some very basic but fundamentally important conditions are met.

The resolution's requirements are simple. It calls for no MOU to be signed until:

First. The General Accounting Office has had a chance to review the proposal; and

Second. The Secretary of Defense has reported to the Senate and House Armed Services and Foreign Relations Committees assessing the impact of the proposed sale on the United States industrial base, the United States-Korea balance of trade, and the interagency coordinating and consulting process for analyzing sales of this kind called for by last year's department of defense authorization bill.

The Korean fighter program involves 120 aircraft. As currently constituted, the agreement would include:

The sale of 12 aircraft.

The sale of 36 kits for coassembly; and

The coproduction of 72 aircraft.

Korea has not yet reached a decision on which American fighter it wants. Both the F-16 and F/A-18 are under consideration. However, an agreement covering either aircraft would likely cost between $1.8 and $3 billion. Since we had a trade deficit last year with Korea of over $10 billion, that may seem like a good idea. However, Korea wants "offsets" totalling at least 60 percent of the contract price, which dramatically reduces any favorable impact the agreement could have on our trade situation.

As my colleagues know, it was only a short while ago that Congress was considering the FSX fighter program for Japan. We adopted a strong joint resolution putting a number of restrictions on that sale. Congress viewed the FSX agreement with a skeptical eye for a number of reasons. The Korean fighter program needs the same skeptical review.

In the FSX sale, we are transferring major aerospace technology to Japan. It has been argued that we are getting important technology in return, but the GAO has made it clear that the United States would not receive any technology from Japan that we do not already have.

In the proposed Korean fighter sale, there is not even a pretense that we will receive any technology in return. The transfer is all one way—from the United States to Korea. Korea will be coproducing aircraft, not codeveloping them as in the FSX sale, which means the technology transfer involved in this sale is somewhat less. However, there is still very extensive technology transfer involved.

Japan has 307 fighter aircraft. Korea has 480. It is therefore much more cost effective for both countries to buy U.S.-built fighters off-the-shelf rather than to codevelop or coproduce their own. Both countries have refused to buy off-the-shelf, however, for the same reason—they want to develop their own domestic aerospace industries.

Korea has made it clear that development of their aerospace industry is a top priority. We do not have to rely on intelligence estimates to assess Korea's goals; the Korean Government itself has explicitly stated its objectives. According to Mr. Chung Tae Seung, the director of the defense industry division of the ministry of trade and industry, the Korean fighter program is designed to give South Korea world-class aerospace industry capabilities.

While both Japan and Korea want to compete with the United States in the aerospace area, there is an important difference between the two countries that we need to consider very carefully. Japan has a provision in its constitution that forbids it from maintaining offensive military forces, and longstanding Japanese Government policy forbids the export of arms. Korea has no such constitutional provision and no such policy with respect to arms exports. Reaching an MOU with Korea, therefore, will likely not only mean serious new competition for Boeing and other United States civilian aircraft manufacturers, it will likely also mean further proliferation in the manufacture of high-technology military weapons. The agreement could therefore contribute to the third world arms race that is already underway.

I think we must act to ensure Korean national security, Mr. President. That is why we have troops in Korea. Maintaining the peace in Korea is in our interest as well as theirs. I do not believe, however, that we should endanger our own industrial base and transfer vital aerospace technology to Korea just so the Koreans can use their military program to develop a major civilian aerospace industry. I do not believe that is in our national interest. I do not see how that

helps enhance either American national security or our economic competitiveness.

Once again, the Defense Department seems driven by short-term considerations. Once again, the Defense Department seems not to have pressed the American case for buying off-the-shelf strongly enough. In fact, the Defense Department's briefing material on the sale demonstrates a fundamental misunderstanding of our negotiating position. Its briefing paper states "the challenge to the U.S.-side was [to] walk the tightrope between dictating to an ally and going along with a program that it believed would not work." Unlike our Defense Department, I do not see how offering to sell United States-built high-performance fighters to Korea while refusing to sell them the manufacturing technology for those aircraft represents "dictating to an ally." In fact, by offering to sell first-line aircraft to Korea, we are demonstrating how important their national security is to us.

Korea, as I stated earlier, had a $10 billion trade surplus with the United States last year. Korea barely avoided being listed under the Super 301 provisions. Korea has made it clear that its drive for coproduction of fighter aircraft is not driven by national security needs, but by their desire to build an internationally competitive aerospace industry. Yet the Department of Defense proposes to give Korea vital U.S. aerospace technology, and to agree to huge offsets that will further enhance the development of their aircraft industry.

These facts warrant taking much stronger action than the delay and analysis we are proposing today. In fact, this resolution is the bare minimum that is necessary. The Koreans arrive today for talks with the Department of Defense. This resolution gives us a chance to send a message to both the Koreans and the administration that Congress intends to watch these negotiations very closely, and that Congress simply will not accept another sale that is not in our long-term economic and national security interests. I urge my colleagues, therefore, to join Senator HEINZ and me, and other colleagues. I urge the Senate to make its voice heard. This is the time we can be influential; this is the time to act.

I say in conclusion that I hope that Senator HEINZ and I and other colleagues can agree upon offering an amendment to the State Department authorization bill that is before us now to expedite the adoption of this resolution by amendment to the bill pending and to send word immediately to the administration.

I thank the President, and yield back my time.

AMENDMENTS SUBMITTED

FOREIGN RELATIONS AUTHORIZATION ACT

PRESSLER AMENDMENT NO. 273

Mr. PRESSLER proposed an amendment to the bill (S. 1160) to authorize appropriations for fiscal year 1990 for the Department of State, the U.S. Information Agency, the Board for International Broadcasting, and for other purposes, as follows:

At the appropriate place add the following new section:

SEC. . The Director of the United States Information Agency may enter into a contract for the construction of the Voice of America's Thailand radio facilities for periods not in excess of five years or delegate such authority to the Corps of Engineers of the United States Department of the Army, provided that there are sufficient funds to cover at least the Government's liability for payments for the fiscal year in which the contract is awarded plus the full amount of estimated cancellation costs.

FOWLER (AND OTHERS) AMENDMENT NO. 274

Mr. MOYNIHAN (for Mr. FOWLER, for himself, Mr. D'AMATO, and Mr. DECONCINI) proposed an amendment to the bill S. 1160, supra, as follows:

On page 7, between lines 2 and 3, insert the following new subsection:

(c) PROHIBITION.—None of the funds authorized to be appropriated under subsection (a)(3), may be obligated or expended for any United States delegation to any meeting of the Conference on Security and Cooperation in Europe (CSCE) or meetings within the framework of the CSCE unless the United States delegation to any such meeting includes individuals representing the Commission on Security and Cooperation in Europe.

HELMS AMENDMENT NO. 275

Mr. HELMS proposed an amendment to the bill S. 1160, supra, as follows:

On page 145, after line 22, add the following new section:

SEC. 915. REPORT ON A MONITORING SYSTEM FOR THE INF TREATY.

The Secretary of State is requested to report to the Senate by September 30, 1989, why the United States' Cargoscan x-ray monitoring system for the Intermediate-Range Nuclear Forces Treaty was not installed at the United States' Votkinsk Portal Monitoring Facility inside the Soviet Union by December 1, 1988, as provided for in the terms of the Treaty, and further, when the Cargoscan system will be operational at Votkinsk.

On page 5, in the table of contents, after the item relating to section 914, add the following new item:

"Sec. 915. Report on a monitoring system for the INF Treaty.".

DOLE (AND OTHERS) AMENDMENT NO. 276

Mr. DOLE (for himself, Mr. MITCHELL, Mr. PELL, Mr. LUGAR, and Mr. HELMS) proposed an amendment to the bill S. 1160, supra, as follows:

At an appropriate place in the bill insert the following:

(a) FINDINGS.—Congress makes the following findings:

(1) The Stockholm Document of September 19, 1986, the first East-West security accord in more than ten years, brought into force significant confidence- and security-building measures in Europe.

(2) The United States has entered into the Negotiations on Confidence and Security Building Measures with the goal of a more stable and secure Europe.

(3) There negotiations have focused on measures to reduce mistrust and misunderstanding about military capabilities and intentions by increasing openness and predictability in the military environment.

(4) The Congress supports President Bush's efforts to make progress in all areas of arms control and supports his recent initiatives in the area of conventional arms control.

(5) The United States and the Soviet Union signed the Agreement on the Prevention of Incidents On And Over the High Seas on May 25, 1972.

(6) The United States and the Soviet Union signed the Nuclear Risk Reduction Center Agreement on September 15, 1987.

(7) The United States and the Soviet Union signed the Agreement on the Prevention of Dangerous Military Activities on June 12, 1989.

(8) The Congress believes that a direct military-to-military communications link between NATO and the Warsaw Pact could prevent misunderstanding in the event of unpredicted military activities or incidents, such as the recent incident in which a Soviet Mig-23 transitted NATO airspace and crashed in Belgium.

(9) The Congress believes such a direct military to military communications link could complement U.S. efforts in the area of confidence- and security-building measures.

(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—the President should raise and request that our NATO allies consider the concept of a direct military to military communications link between NATO and the Warsaw Pact at the appropriate NATO forum.

(c) PRESIDENTIAL REPORT.—The President shall submit to Congress, not later than December 1, 1989 a report on the technical feasibility, operational characteristics and costs of establishing a direct military-to-military communications link between NATO and the Warsaw Pact.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BUMPERS. Mr. President, I would like to announce that the hearing before the Subcommittee on Public Lands, National Parks and Forests of the Committee on Energy and Natural Resources, which was previously announced for July 20 at 2 p.m., has been rescheduled for July 20 at 1:30 p.m. The measure to be heard is

S. 371, a bill to designate certain National Forest System lands in the State of Idaho for inclusion in the National Wilderness Preservation System, to prescribe certain management formulae for certain National Forest System lands, and to release other forest lands for multiple-use management, and for other purposes.

For further information regarding the hearing, please contact Beth Norcross of the subcommittee staff at (202) 224-7933.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SARBANES. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be authorized to meet during the session of the Senate on Monday, July 17, beginning at 2 p.m., to hear Thomas D. Larson, nominated by the President to be Administrator of the Federal Highway Administration, U.S. Department of Transportation.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

FLORIDA A&M UNIVERSITY MARCHING BAND HONORED

● Mr. GRAHAM. Mr. President, I rise today to praise the Florida A&M University Marching Band. The outstanding Rattler band, the "Marching 100," was chosen to represent the United States in Paris July 14 for the 200th anniversary of the French Revolution (Bastille Day).

These excellent musicians honor our Nation. They are ambassadors of music. Their talent and high-stepping style make them the best.

Led by Dr. William P. Foster, who revolutionized marching techniques, the "Marching 100" is the only band representing the United States. The Rattler band is one of 16 bands worldwide invited by the Government of France to celebrate 200 years of freedom in France.

As a long-time fan of the "Marching 100," I am pleased that Dr. Foster and the band are getting much deserved international recognition. Music lovers around the world salute Florida A&M University and its outstanding band for this achievement.

Congratulations, Rattlers. You make all Floridians proud.●

CELEBRATING THE 25TH ANNIVERSARY OF THE URBAN MASS TRANSPORTATION ACT

● Mr. D'AMATO. Mr. President, this month marks the 25th anniversary of the Urban Mass Transportation Act of 1964. The original goals of the Federal program were to stabilize a failing mass transportation system and develop a strong nationwide commuter system.

For the past 25 years the Urban Mass Transportation Act has played a key role in the economic prosperity in both urban and rural communities across the Nation. The expansion of policies and direct investment resulting in greater accessibility of safe and reliable public transportation services make it a facet of everyday American life. The 25th anniversary highlights the important commitment and the public-private partnership that supports transit. It is an appropriate time to review the accomplishments of the past and to look ahead and consider the needs of the future.

Mass transit is a vital component of modern life. Americans took nearly 9 billion trips on transit last year; 183 billion since 1964. Nearly 6 million people a day ride New York City's bus and rail network. Americans have come to depend on transit not only for access of their jobs and for shopping, but also for the freedom to come and go as they please.

The cooperation between Federal, State, and local governments, with private interests and passengers in support of transit has been a key factor in funding. In 1987 $16.7 billion was invested in transit: 34 percent from fares and other private sources, 27 percent by local governments, 20 percent by States and 19 percent by the Federal Government.

Investments in transit have many benefits. For every $100 million spent on capital projects there is a $327 million increase in business revenue. Every $100 million spent supports nearly 8,000 jobs. In New York 140,000 jobs in the Metropolitan area are provided by the MTA's capital improvement program. This reduces the unemployment rate in the area's construction industry by about 25 percent.

By providing a reliable and convenient mode of travel for employees and patrons, transit systems attract new businesses and encourages reinvestment. Integration of transit with private construction projects reduces the costs of city services in the areas of public works, public safety, and general services.

The role of the transit system was expanded over the past 25 years to include social service, economic development, environmental effects, and energy conservation. Transit managers face the challenge of balancing legitimate competing public and private interests and goals. Investment in high-capacity, shared-ride transportation services would reduce air pollution improving the quality of air, reducing gridlock and congestion, cutting costs, and increasing transit efficiency.

The first 25 years of commitment to public transportation should be observed with pride. We should also take the opportunity to consider the shape and direction of national transit policy for the next 25 years.●

BUDGET SCOREKEEPING REPORT

● Mr. SASSER. Mr. President, I hereby submit to the Senate the latest budget scorekeeping report for fiscal year 1989, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report was prepared consistent with standard scorekeeping conventions. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

This report shows that current level spending is over the budget resolution by $3.8 billion in budget authority, and over the budget resolution by $1.0 billion in outlays. Current level is under the revenue floor by $0.3 billion.

The current estimate of the deficit for purposes of calculating the maximum deficit amount under section 311(a) of the Budget Act is $136.4 billion, $0.4 billion above the maximum deficit amount for 1988 of $136.0 billion.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 1989.

Hon. JIM SASSER,
Chairman, Committee on the Budget, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal year 1989 and is currently through July 14, 1989. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the most recent budget resolution for fiscal year 1989, House Concurrent Resolution 268. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32, the 1986 first concurrent resolution on the budget.

Since my last report, Congress has taken no action that affects the current level of spending or revenues.

Sincerely,

ROBERT D. RIESCHAUER,
Director.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 101ST CONG., 1ST SESS., AS OF JULY 14, 1989

[In billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 268 [2]	Current level +/− resolution
Fiscal year 1989			
Budget authority	1,235.8	1,232.1	3.8
Outlays	1,100.8	1,099.8	1.0
Revenues	964.4	964.7	−.3
Debt subject to limit	2,784.8	[3] 2,824.7	−39.9
Direct loan obligations	24.4	28.3	−3.9
Guaranteed loan commitments	111.0	111.0	.....

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 101ST CONG., 1ST SESS., AS OF JULY 14, 1989—Continued

[In billions of dollars]

	Current level [1]	Budget resolution H. Con. Res. 268 [2]	Current level +/− resolution
Deficit	136.4	[4] 136.0	[5] .4

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval and is consistent with the technical and economic assumptions of H. Con. Res. 268. In addition, estimates are included of the direct spending effects for all entitlement or other mandatory programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] In accordance with sec. 5(a)(b) the levels of budget authority, outlays and revenues have been revised for Catastrophic Health Care (Public Law 100–360).

[3] The permanent statutory debt limit is $2,800.0 billion.

[4] Maximum deficit amount [MDA] in accordance with section 3(7) of the Congressional Budget Act, as amended.

[5] Current level plus or minus MDA.

PARLIAMENTARIAN STATUS REPORT 101st CONGRESS, 1st SESS., AS OF CLOSE OF BUSINESS JULY 14, 1989

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			964,434
Permanent appropriations and trust funds	874,205	724,990	
Other appropriations	594,475	609,327	
Offsetting receipts	−218,335	−218,335	
Total enacted in previous sessions	1,250,345	1,115,982	964,434
II. Enacted this session:			
Adjust the purchase price for non-fat dry dairy products (Public Law 101–7)		−10	
Implementation of the Bipartisan Accord on Central America (Public Law 101–14)	−11		
Dire emergency and urgent supplemental appropriations, 1989 (Public Law 101–45)	3,493	1,023	
Total enacted this session	3,482	1,013	
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Dairy indemnity program	[1]	[1]	
Special milk	4		
Food Stamp Program	29		
Federal crop insurance corporation fund	144		
Compact of free association	1	1	
Special benefits	37	37	
Payments to the farm credit system	35	35	
Payment to the civil service retirement and disability trust fund	(85)	(85)	
Payment to hazardous substance superfund	(99)	(99)	
Supplemental Security Income	201	201	
Special Benefits for Disabled Coal Miners	3		
Medicaid:			
Public Law 100–360	45	45	
Public Law 100–485	10	10	
Family Support Payments to States:			
Previous law	355	355	
Public Law 100–485	63	63	
Total entitlement authority	926	747	
VI. Adjustment for Economic and Technical Assumptions	−18,925	−16,990	
Total current level as of July 14, 1989	1,235,828	1,100,751	964,434
1989 budget resolution H. Con. Res. 268	1,232,050	1,099,750	964,700
Amount remaining:			
Over budget resolution	3,778	1,001	

PARLIAMENTARIAN STATUS REPORT 101st CONGRESS, 1st SESS., AS OF CLOSE OF BUSINESS JULY 14, 1989—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Under budget resolution			266

[1] Less than $500 thousand.

Notes.—Numbers may not add due to rounding. Amounts in parenthesis are interfund transactions that do not add to budget totals.●

THE PRIDE OF NEW RICHMOND, WI

● Mr. KOHL. Mr. President, a group of young men and women from New Richmond, a community of approximately 5,000 known as "the City Beautiful" in my home State of Wisconsin, are marching proudly today. And I rise to share our pride in their accomplishments with you.

The New Richmond Marching Tiger Band from New Richmond High School and their dedicated director, Richard Gregerson, have received an invitation from the Soviet Union to perform next June in Moscow, Leningrad, and Tallin. This marks the first time that an American high school marching band has been invited to perform in the Soviet Union.

In recognition of this unique honor, a delegation from the Soviet Union will be coming to New Richmond to officially extend their Government's invitation to these 135 high school students during the New Richmond Fun Festival scheduled for this Sunday, July 23.

It is no surprise that this honor is being conferred upon the dedicated young people known as the Marching Tigers. They represented the residents of the great State of Wisconsin in President Jimmy Carter's inaugural parade. And since 1979, the Marching Tigers have achieved Champion or Grand Champion status in 101 of the 108 competitive parades in which they have marched.

Mr. President, so much is written today about young people and the problems they are encountering in communities across our Nation. I believe it is important for us to take the time to spread some good news as well, to recognize the dedication and discipline of these 13- to 18-year-olds from New Richmond and the pride and support of their teachers, families, and friends.

As the New Richmond Marching Tiger Band prepares for its historic trip to the Soviet Union, I commend them for the honor they have received and the great credit they bring to themselves, their families, their school, and their community. And I wish them good fortune when they embark on this exciting adventure as goodwill ambassadors of Wisconsin and the United States of America.●

ORDERS FOR TOMORROW

RECESS UNTIL 10 A.M.

MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m, Tuesday, July 18, and that following the time for the two leaders, there be a period of morning business not to extend beyond 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FROM 12:30 P.M. UNTIL 2:15 P.M. TOMORROW

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate stand in recess tomorrow from 12:30 p.m. to 2:15 p.m. to accommodate the party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEBATE AND VOTE ON MOYNIHAN AMENDMENT NO. 268

Mr. MITCHELL. Mr. President, I ask unanimous consent that at 2:15 p.m. there be 20 minutes of debate on the Moynihan amendment No. 268, and that the time be equally divided and controlled between Senators MOYNIHAN and HELMS, and that at the expiration of time on the amendment, no later than 2:35 p.m., a vote occur on the Moynihan amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I have no further business at this time. I understand that the distinguished Republican leader would like to make a statement, so I yield to him.

RECESS UNTIL 10 A.M. TOMORROW

Mr. MITCHELL. Mr. President, if the distinguished Republican leader has no further business and if no Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess under the previous order until 10 a.m. Tuesday, July 18.

There being no objection, the Senate, at 6:12 p.m., recessed until Tuesday, July 18, 1989, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate July 17, 1989:

DEPARTMENT OF STATE

WILLIAM LACY SWING, OF NORTH CAROLINA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF SOUTH AFRICA.

JOHNNY YOUNG, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED

STATES OF AMERICA TO THE REPUBLIC OF SIERRA LEONE.

INTERNATIONAL MONETARY FUND

THOMAS C. DAWSON II, OF THE DISTRICT OF COLUMBIA, TO BE U.S. EXECUTIVE DIRECTOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF 2 YEARS, VICE CHARLES H. DALLARA, RESIGNED.

DEPARTMENT OF DEFENSE

JOHN W. SHANNON, OF MARYLAND, TO BE UNDER SECRETARY OF THE ARMY, VICE MICHAEL P.W. STONE, RESIGNED.

ANNE NEWMAN FOREMAN, OF MARYLAND, TO BE UNDER SECRETARY OF THE AIR FORCE, VICE JAMES F. MCGOVERN, RESIGNED.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

GWENDOLYN S. KING, OF THE DISTRICT OF COLUMBIA, TO BE COMMISSIONER OF SOCIAL SECURITY, VICE DORCAS R. HARDY, RESIGNED.

DEPARTMENT OF VETERANS AFFAIRS

ALLEN B. CLARK, JR., OF TEXAS, TO BE ASSISTANT SECRETARY OF VETERANS AFFAIRS (VETERANS LIAISON AND PROGRAM COORDINATION) (NEW POSITION—PUBLIC LAW 100-527).

ENVIRONMENT PROTECTION AGENCY

LINDA J. FISHER, OF OHIO, TO BE ASSISTANT ADMINISTRATOR FOR TOXIC SUBSTANCES OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE JOHN ARTHUR MOORE, RESIGNED.

EXECUTIVE OFFICE OF THE PRESIDENT

HERBERT D. KLEBER, OF CONNECTICUT, TO BE DEPUTY DIRECTOR FOR DEMAND REDUCTION, OFFICE OF NATIONAL DRUG CONTROL POLICY (NEW POSITION).